

## FINAL AGENDA

REGULAR COUNCIL MEETING  
TUESDAY  
MAY 21, 2013

COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
4:00 P.M. AND 6:00 P.M.

### 4:00 P.M. MEETING

*Individual items on the 4:00 p.m. meeting agenda may be postponed to the 6:00 p.m. meeting.*

#### 1. CALL TO ORDER

##### NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

#### 2. ROLL CALL

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

MAYOR NABOURS  
VICE MAYOR EVANS  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER WOODSON

#### 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

##### MISSION STATEMENT

*The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.*

#### 4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

- A. Consideration and Approval of Minutes: City Council Regular Meeting of May 7, 2013, and Work Session of May 14, 2013.

#### 5. PUBLIC PARTICIPATION

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a*

*representative who may have no more than fifteen minutes to speak.*

**6. PROCLAMATIONS AND RECOGNITIONS**

Week of May 19, 2013, as ***National Public Works Appreciation Week*** (to be read at the Public Works Equipment Show being held in the Wheeler Park Parking Lot between the 4:00 p.m. and 6:00 p.m. portions of the meeting)

**7. APPOINTMENTS**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).*

None

**8. LIQUOR LICENSE PUBLIC HEARINGS**

None

**9. CONSENT ITEMS**

*All matters under **Consent Agenda** are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

- A. Consideration of Construction Manager at Risk Contract:** Street Maintenance Program 2013: Cedar Avenue 2010 Bond Improvements.

**RECOMMENDED ACTION:**

- 1) Award Guaranteed Maximum Price Contract #4 (GMP #4) to the Construction Manager at Risk (CMAR) Contract with C and E Paving and Grading, LLC in an amount not to exceed \$750,000.00. The contract period is 60 calendar days; and
- 2) Authorize the City Manager to execute the necessary documents.

- B. Consideration of Approval of the Intergovernmental Agreement:** between the Governing Board of the Coconino County Community College District and City of Flagstaff for the East Flagstaff Community Library building rental agreement renewal.

**RECOMMENDED ACTION:**

Approve the lease agreement IGA renewal for the East Flagstaff Community Library.



**10. ROUTINE ITEMS**

- A. Consideration and Adoption of Ordinance No. 2013-10:** An ordinance of the City Council of the City of Flagstaff approving the form and authorizing the execution and delivery of an Equipment Lease/Purchase Agreement for Renewable Energy Equipment; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance; and authorizing clerical corrections.

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013 -10 by title only for the final time
- 2) City Clerk reads Ordinance No. 2013-10 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2013-10

- B. Consideration and Adoption of Resolution No. 2013-11:** A resolution of the Mayor and Council of the City of Flagstaff, Arizona, declaring, for purposes of section 1.150.2 of the Federal Treasury Regulations, official intent to be reimbursed in connection with certain capital expenditures relating to the installation of three solar photo-voltaic systems.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2013-11 by title only
- 2) City Clerk reads Resolution No. 2013-11 by title only (if approved above)
- 3) Adopt Resolution No. 2013-11

- C. Consideration and Approval of Intergovernmental Agreement Amendment:** Amendment Two to the Intergovernmental Agreement (IGA)/Joint Project Agreement (JPA) 11-097I between the City of Flagstaff (City) and the Arizona Department of Transportation (ADOT) for the FY2013 Highway Safety Improvement Program (HSIP), Beulah Bike Lanes.

**RECOMMENDED ACTION:**

Approve the IGA/JPA Amendment Two which will obligate additional FY2013 HSIP funding for design work for Beulah Bike Lanes in the amount of \$45,000.

**RECESS**

**6:00 P.M. MEETING**

**RECONVENE****NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

**11. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

MAYOR NABOURS

VICE MAYOR EVANS

COUNCILMEMBER BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER WOODSON

**12. CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA****13. PUBLIC HEARING ITEMS**

None

**14. REGULAR AGENDA**

**A. Presentation:** Northern Arizona Center for Entrepreneurship and Technology (NACET) periodic update.

**B. Consideration and Approval of Amendments:** Flagstaff City Council Rules of Procedure.  
**RECOMMENDED ACTION:**

Approve the proposed changes to Rules 4.01, 5.01, 10.9, 11.01, and 11.05 (all related to *Discussion Items* and *Possible Future Agenda Items*) of the Flagstaff City Council Rules of Procedure.

**C. Consideration and Adoption of Resolution No. 2013-10:** A resolution of the City Council of the City of Flagstaff, Arizona, declaring as a public record that certain documents filed with the City Clerk entitled the "2012 International Family of Codes, and the 2013 Amendments to City Code, Title 4, Building Regulations, and the ICC A117.1 Accessible and Usable Buildings and Facilities Standard, 2009 Edition" which includes the International Building Code 2012 Edition; International Residential Code, 2012 Edition; International Plumbing Code, 2012 Edition; International Mechanical Code, 2012 Edition; International Fuel Gas Code, 2012 Edition; International Existing Building Code, 2012 Edition; International Energy Code, 2012 Edition; ICC A117.1, Accessible and Usable Buildings and Facilities Standard, 2009 Edition; and providing for amendments, additions, and deletions thereto.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2013-10 by title only
- 2) City Clerk reads Resolution No. 2013-10 by title only (if approved above)
- 2) Adopt Resolution No. 2013-10

**15. DISCUSSION ITEMS**

None

**16. PUBLIC PARTICIPATION****17. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

**18.        ADJOURNMENT****CERTIFICATE OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Elizabeth A. Burke, MMC, City Clerk

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 05/16/2013  
**Meeting Date:** 05/21/2013



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**TITLE**

**Consideration and Approval of Minutes:** City Council Regular Meeting of May 7, 2013, and Work Session of May 14, 2013.

**RECOMMENDED ACTION:**

Amend/approve minutes of the City Council Regular Meeting of May 7, 2013, and Work Session of May 14, 2013.

**INFORMATION**

Attached are copies of the minutes of the City Council Regular Meeting of May 7, 2013, and Work Session of May 14, 2013, for Council review, amendment and approval.

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**Attachments:** 05.07.2013.CCRM.Minutes  
05.14.2013.CCWS.Minutes

## MINUTES

REGULAR COUNCIL MEETING  
TUESDAY, MAY 7, 2013  
COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
4:00 P.M. AND 6:00 P.M.

### 1. Call to Order.

Mayor Nabours called the meeting to order at 4:05 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. Roll Call

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

#### **Councilmembers present:**

MAYOR NABOURS  
VICE MAYOR EVANS  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER BREWSTER  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER WOODSON

#### **Councilmembers absent:**

NONE

Others present: City Manager Kevin Burke and Interim City Attorney Michelle D'Andrea.

### 3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the Pledge of Allegiance and then Mayor Nabours read the City of Flagstaff Mission Statement.

#### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.*

### 4. **APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

- A. **Consideration and approval of Minutes:** City Council Regular Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of

April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 2013.

Staff was directed to amend Page 8 of the April 16, 2013, meeting (second paragraph) where it indicated that Mayor Nabours had made a statement in the second paragraph, but it was Councilmember Oravits.

Staff was directed to amend Page 2 of the April 30, 2013, special meeting to reflect that Interim City Attorney Michelle D'Andrea left the room during the discussion of item 4B (Review of City Attorney Resumes) as she is a candidate for selection.

Staff was directed to amend the record of vote on Page 5 of the April 16, 2013, meeting where it indicated that Councilmember Brewster moved to approve Consent Item 9-B; it should be Item 9-D.

Staff was directed to amend Page 6 of the April 30, 2013, meeting (first paragraph) where it indicated that Councilmember Woodson noted that he would be declaring an emergency, it should be declaring a conflict.

Lastly, it was requested that Page 12 of the April 24-26, meeting (first paragraph under the Library section) be modified to reflect \$36,000 as being redirected from the Cardinals to the Library.

**Mayor Nabours moved to approve [the minutes of the City Council Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 2013] as amended; seconded; passed unanimously.**

**5. PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

None.

**6. PROCLAMATIONS AND RECOGNITIONS**

None

**7. APPOINTMENTS**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).*

**A. Consideration of Appointments: Disability Awareness Commission.**

**Councilmember Woodson moved to appoint James Martinez to the Disability Awareness Commission, with a term to expire March 2014; and Kaitlyn Verfuerth to a term to expire March 2016; seconded; passed unanimously.**

**B. Consideration of Appointments: Sustainability Commission.**

**Councilmember Woodson moved to appoint Jodi Norris and Jamie Semana to the Sustainability Commission, with a term to expire October 2014; seconded; passed unanimously.**

**C. Consideration of Appointments: Open Space Commission.**

Mayor Nabours noted that because Jamie Semana was appointed to the Sustainability Commission she was no longer eligible for appointment to the Open Space Commission.

**Councilmember Brewster moved to reappoint Bryan Burton to the Real Estate position on the Open Space Commission, to a term to expire April 2016; Bruce Fox to the Natural and Cultural Sciences position to a term to expire April 2015; and appoint Christopher Ives to the At-Large position to a term to expire April 2016; seconded; passed unanimously.**

**8. LIQUOR LICENSE PUBLIC HEARINGS**

**Councilmember Overton moved to open the public hearing on all four applications; seconded; passed unanimously.**

There being no public input, **Councilmember Overton moved to close the public hearing on all four applications; seconded; passed unanimously.**

**Councilmember Overton moved to reopen the public hearing for 8-B Mr. Smokes; seconded; passed unanimously.**

Vice Mayor Evans asked Mr. Morrissey if the store would be selling forties and shooters. Mr. Morrissey responded that they would primarily be selling craft beer and wine. Vice Mayor Evans followed up by asking if it would be okay to tell the public that Mr. Smokes would not sell forties. Mr. Morrissey responded "yes."

**Councilmember Overton moved to close the public hearing for 8-B Mr. Smokes; seconded; passed unanimously.**

**Councilmember Oravits moved to forward all four applications to the state with a recommendation of approval; seconded; passed unanimously.**

- A. **Consideration and Action on Liquor License Application:** John Kennelly, Historic Brewing Company, 4366 E. Huntington Dr., Suite A, Series 03, New License.
- B. **Consideration and Action on Liquor License Application:** Ray Morrissey, "Mr. Smokes", 2126 N. 4th St., Series 10 (beer and wine store), New License.
- C. **Consideration and Action on Liquor License Application:** Michael Funk, "Firecreek", 22 E. Route 66, Series 07, Person Transfer.
- D. **Consideration and Action on Liquor License Application:** Randy Nations, "San Felipe's", 103 N. Leroux, Series 06 (bar- all spirituous liquor), Person Transfer.

**9. CONSENT ITEMS**

*All matters under 'Consent Agenda' are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

Item 9-D will be removed from the Consent list because Councilmember Woodson has a conflict.

Mayor Nabours requested that item 9E be moved to the 6:00 meeting.

**Councilmember Overton moved to approve Consent Items 9-A, 9-B, and 9-C; seconded; passed unanimously.**

- A. **Consideration and Approval of Construction Manager at Risk Contract:** Street Maintenance Program 2013

**MOTION:**

- 1) Approve the Construction Manager at Risk Contract with C and E Paving and Grading, LLC in an amount not to exceed \$943,788.00.
- 2) Authorize Change Order Authority in the amount of \$200,000.00 to cover costs to re-surface seven Parks parking lots anticipated in FY 2014, or potential costs associated with unanticipated or additional items of work.
- 3) Authorize the City Manager to execute the necessary documents.

- B. **Consideration and Approval of Construction Manager at Risk Design Phase Contract:** Westplex Taxi Lanes Reconstruction Project.



**MOTION:**

- 1) Award the Construction Manager at Risk Contract with Banicki Construction in an amount not to exceed \$20,296.10, subject to approval by the Federal Aviation Administration (FAA) and ADOT Multi-Modal.
- 2) Authorize Change Order Authority of \$1,014.81 (5%) to cover potential costs associated with unanticipated or additional items of work.
- 3) Authorize the City Manager to execute the necessary documents.

- C. Consideration and Approval of Service Agreement:** Supplemental Agreement No.2, Pulliam Airport Master Plan Improvements, Construction Services for the Westplex Taxilanes Reconstruction Project.

**MOTION:**

- 1) Approve Supplemental Agreement Number 2 with Kimley-Horn and Associates, Inc. in the amount of \$421,369.00 subject to acceptance of a grant from the Federal Aviation Administration and the Arizona Department of Transportation, Multimodal Planning Division, Aeronautics.
- 2) Authorize the City Manager to execute the necessary documents.

- D. Consideration and Approval of Construction Contract:** Butler Avenue Median Improvements Project (Phase 3).

**MOTION:**

- 1) Approve the construction contract with RTR Paving and Resurfacing, LLC. in the amount of \$373,896.50 including a \$37,000 contract allowance and a contract time of 105 calendar days;
- 2) Approve Change Order Authority in the amount of \$33,690.00 (10% of contract amount, less the allowance) for potential costs associated with unanticipated items of work; and
- 3) Authorize the City Manager to execute the necessary documents.

Councilmember Woodson declared a conflict of interest and left the dais.

Council inquired about the notification process to the neighborhood and business that may be affected by this project.

Community Development Project Manager Randy Groth explained that staff went door to door and met with the neighbors and businesses; they also sent out postcards and letters to all blocks that may be impacted and held a public meeting in Chambers.

Council asked if the funding for the project was coming from the BBB tax. Mr. Groth indicated that a couple of subsets of the project are going to be funded by miscellaneous transportation funds. Mr. Burke clarified that those subsets will likely be funded with HURF dollars.

**Councilmember Brewster moved to approve Consent Item 9-D; seconded; passed 6-0 with Councilmember Woodson abstaining.**

- E. **Consideration and Approval of Amendment to Lease Agreement:** Amendment to the Lease Agreement with Boys and Girls Club for the Cogdill Recreation Center.

Item moved to the 6:00 meeting.

Mr. Burke stated that there is a need for legal advice on Consent Item 9-E and Council will need to adjourn to executive session after the 4:00 meeting.

Mayor Nabours added that the decision on this item will be moved to the 6:00 p.m. meeting and the same would apply to item 10-C.

10. **ROUTINE ITEMS**

- A. **Consideration and Approval of Street Closure(s):** NACo (WIR) Western Interstate Regional Conference and **Closure of Alcohol Service on Heritage Square:** NACo (WIR) Western Interstate Regional Conference

Recreation Manager Brian Grube introduced Coconino County Supervisor Liz Archuleta.

Supervisor Archuleta provided a brief history on how the Western Interstate Regional (WIR) Conference came to be in Flagstaff this year. There are 375 attendees anticipated at the conference with possible additional registrations on site. Attendees include various County elected officials, the Board of Directors of NACo, and other representatives.

There will be events for attendees that showcase downtown Flagstaff. The Route 66 Car Club was invited to display their cars; this is the need for the street closure.

Council asked if the events in Heritage Square will be closed off to the public. Supervisor Archuleta stated that the event will be closed off to conference attendees only but access will be available to all of the businesses in Heritage Square. Additionally, downtown will be open and the general public will be welcome to come and view the Route 66 Car Club vehicles and patronize the downtown area.

**Councilmember Overton moved to approve the street closure at Aspen Ave between San Francisco and Leroux on Wednesday, May 22, 2013, from 2:30 p.m. - 8:00 p.m. and approve the serving of alcohol on Heritage Square from 5:30 p.m. - 8:00 p.m.; seconded; passed unanimously.**

- B. **Consideration and Approval of Intergovernmental Agreement:** Master Intergovernmental Agreement between the City of Flagstaff (City), Coconino County (County), Northern Arizona University (NAU), and the Coconino County Community College District (CCC) for the support of the Northern Arizona Intergovernmental Public Transit Authority (NAIPTA).

Management Services Director Barbara Goodrich introduced Jeff Meilback, General Manager of NAIPTA, and indicated that they were available to answer questions.

Council asked if there was any financial impact related to the amendments. Mr. Meilback explained that the only financial impact to the City of Flagstaff is the reduction of the annual membership dues. In addition to minor changes, Coconino Community College will be joining the group and Yavapai County will be leaving.

**Councilmember Barotz moved to approve the Amended and Restated Master Intergovernmental Agreement; seconded; passed unanimously.**

- C. **Consideration and Adoption of Ordinance No. 2013-10:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT FOR RENEWABLE ENERGY EQUIPMENT; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AND AUTHORIZING CLERICAL CORRECTIONS.

Moved to 6:00 p.m. meeting.

- D. **Consideration and Approval of Ordinance 2013-07 authorizing the trade of City-Owned Property:** AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY NEAR BUTLER AVENUE AND ELDEN STREET AS PART OF AN EXCHANGE AGREEMENT WITH SOUTHSIDE DEVELOPMENT, LLC; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT.

**Councilmember Overton moved to read Ordinance No. 2013-07 by title only for the final time; seconded; passed unanimously.**

**Councilmember Brewster moved to adopt Ordinance No. 2013-07; seconded; passed unanimously.**

- E. **Consideration and Adoption of Ordinance No. 2013-09:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF AMENDING THE FLAGSTAFF CITY CODE, TITLE 1, ADMINISTRATIVE, PERSONNEL SYSTEM, SECTION 1-14-001-0001, PERSONNEL SYSTEM ADOPTED, AMENDING THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS BY ADOPTING "THE 2013 ADDENDUM 5 FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS" BY REFERENCE, RELATING TO POLICIES AND PROCEDURES, AMENDING OR ADOPTING SECTIONS RELATING TO GENERAL DEFINITIONS, HOLIDAY LEAVES, VACATION LEAVE, SICK LEAVE, DEPENDENT SICK LEAVE, PERSONAL LEAVE, PURCHASE DAY PROGRAM, BEREAVEMENT LEAVE, FAMILY MEDICAL LEAVE, MILITARY

LEAVE, MILITARY TRAINING LEAVE, JURY DUTY LEAVE, CRIME VICTIM LEAVE, VOTING DAY LEAVE, PAID LEAVE OF ABSENCE, LEAVE WITHOUT PAY, UNAUTHORIZED LEAVE WITHOUT PAY, DONATED LEAVE, AND INCLEMENT WEATHER; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

**Councilmember Brewster moved to read Ordinance No. 2013-09 by title only for the final time; seconded; passed unanimously.**

**Councilmember Brewster moved to adopt Ordinance No. 2013-09; seconded; passed unanimously.**

- F. Consideration and Approval of Purchase Under National Intergovernmental Purchasing Alliance Contract:** Purchase one (1) Four Wheel Drive Backhoe Loader with Attachments.

Utilities Director Brad Hill introduced Mark Richardson, Operations Manager for the Utilities Division.

In response to Council questions, Mr. Richardson explained that the Backhoe would be used across the Water Distribution Section whenever maintenance is needed. This purchase is to replace a 1991 John Deere Backhoe that is in need of retirement; the new backhoe is being purchased through a local contractor and comes with a three year warranty. The funding for the purchase is coming from the Utilities enterprise fund.

**Councilmember Overton moved to approve the purchase of one four wheel drive backhoe loader with attachments from Empire Caterpillar Equipment of Flagstaff, Arizona in the amount of \$103,037.00 plus tax and added fees for a replacement of the Water Distribution Section's 1991 John Deere 510D backhoe loader with attachments; seconded; passed unanimously.**

### **RECESS**

The Flagstaff City Council recessed their Regular Meeting of May 7, 2013, at 4:50 p.m.

**Mayor Nabours moved to convene into Executive Session in regards to Consent Item 9-E and Routine Item 10-C. Both issues need legal advice in regard to contract issues; seconded; passed unanimously.**

### **6:00 P.M. MEETING**

### **RECONVENE**

Mayor Nabours reconvened the Regular Meeting of May 7, 2013, at 6:03 p.m.

**NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

**11. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

**Councilmembers present:**

MAYOR NABOURS  
VICE MAYOR EVANS  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER BREWSTER  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER WOODSON

**Councilmembers absent:**

NONE

Others present: City Manager Kevin Burke and Interim City Attorney Michelle D'Andrea.

**12. CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA**

Mayor Nabours requested that these items be discussed at the end of the regular agenda.

**10C. Consideration and Adoption of Ordinance No. 2013-10:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT FOR RENEWABLE ENERGY EQUIPMENT; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AND AUTHORIZING CLERICAL CORRECTIONS.

Mr. Burke advised the City Council to read this ordinance by title only for the first time tonight. It is believed that there may be some additional information to provide for the 2<sup>nd</sup> reading that can be scheduled on May 21, 2013.

**Councilmember Barotz moved to read Ordinance No. 2013-10 by title only for the first time; seconded; passed 6-1 with Councilmember Oravits casting the dissenting vote.**

- 9E. **Consideration and Approval of Amendment to Lease Agreement:**  
Amendment to the Lease Agreement with Boys and Girls Club for the Cogdill Recreation Center.

Mr. Burke requested that this item be pulled from the agenda for further legal consideration by staff.

13. **PUBLIC HEARING ITEMS**

None

14. **REGULAR AGENDA**

A. **Presentation:** *National Tourism Week.*

Director of the Flagstaff Convention and Visitors Bureau Heidi Hansen provided a brief PowerPoint presentation on the National Travel and Tourism and National Train Day events.

Ms. Hansen introduced Sherry Henry, Director of the Arizona Office of Tourism. Ms. Henry presented a PowerPoint presentation on the impacts of tourism on the State of Arizona. She said that the mission was to strengthen Arizona's economy through tourism promotion.

B. **Presentation:** *Vision Flagstaff.*

Mark DiLucido in the Community Design and Redevelopment Group provided Council with an overview of the *Vision Flagstaff* website.

Mr. DiLucido explained that *Vision Flagstaff* is a tool that was developed to allow Flagstaff citizens to give their input on what they would like to see in their community with regard to community design and redevelopment, beautification, historical preservation, and public art.

The website allows for people to submit ideas and projects. Once the idea is submitted it is uploaded to the website where people can vote and comment on them. There is a threshold of 50 likes necessary for the City to begin looking at the project and begin the feasibility study.

Mr. Burke added that this is a tool to help determine where the public interest lies and what the public priority is. The website could be used as another tool for prioritizing projects.

Council asked if it would be possible to consider the cost in the concepts. Mr. DiLucido responded that this was the reason for the feasibility study; the study would define what is available and for what cost.

There was concern about discrediting the opinion and recommendations of the boards and commissions that already deal with these projects, their input will still need to be obtained before moving forward with any project.

Mr. DiLucido explained that the website offers an explanation to participants about the elements of time and cost associated with these types of projects and that placement on the site or a feasibility study on a project does not guarantee action.

Council expressed the need for a dislike button. While it is important to garner support, it would be just as interesting to know how many do not like a project or how many looked at the project but offered no vote. There are other opinions that need to be considered.

**C. Consideration of Proposals: New Municipal Court Building.**

Purchasing Director Rick Compau was available for questions from Council.

Mayor Nabours explained that the City has been to the drawing board a couple of times on this issue and it is believed that they may need to start over again.

Mr. Burke offered that the principle challenge is the funds associated with the project. The proposals that they have now still create a financial challenge and staff would like to reevaluate the criteria to develop better requirements with regard to the financial issues.

**Mayor Nabours moved to reject all proposals as submitted for Request for Proposals 2012-14, property and design-build construction for a new municipal court building; seconded; passed unanimously.**

Flagstaff resident Kathryn Barrett addressed Council about the consideration of the sale of property at the end of San Francisco. There is a lot of opposition to the sale of that property; she urged Council to keep that in mind when moving forward with possible land sales for this project.

**D. Consideration and Approval of Settlement and Release Agreement: Canyon Del Rio.**

Planning Director Jim Cronk provided a brief overview of the settlement agreement. Canyon Del Rio and the City of Flagstaff are involved in two different unsettled lawsuits. One relates to zoning and the other relates to fund reimbursement. This agreement resolves the ordinances and planning documents to be used as the project goes forward with development.

There are several specific points that were negotiated in the agreement such as tree resources, the section on affordable housing, there is a partial land donation, and the agreement recognizes some future possibilities for future affordable housing.

Additionally there are some waivers included in the agreements with regards to low impact development and rainwater harvesting. All together there will be a rezone application, development agreement, 1984 planning document that will be brought up to date with this agreement.

The Canyon Del Rio owner has signed the settlement agreement, and if the City signs on to the agreement both parties will ask for the court cases to be stayed as the process works through.

There are unique circumstances in play with regards to the zoning code that is applicable to the development. The agreement addresses these circumstances and comes to a reasonable solution for all parties.

**Councilmember Woodson moved to approve the Settlement and Release Agreement between the Canyon Del Rio Investors, LLC and the City of Flagstaff, Arizona and authorize the City Manager to sign the Agreement and any other necessary and appropriate documents; and authorize staff to take other actions as needed to further the Council direction; seconded; passed unanimously.**

**E. City Comment on US Forest Service Proposed Action - Flagstaff Watershed Protection Project.**

Wildland Fire Manager Paul Summerfelt presented a PowerPoint presentation that provided a status update on the Flagstaff Watershed Protection Project.

Over the last 6 months, since the election, there has been \$800,000.00 brought in from outside agencies, \$750,000.00 has come from the United States Forest Service (USFS).

Mr. Burke indicated that there are many different decision points along the time line that the City has to sign off on. The decisions are typically USFS decisions but they look for City to be agreeable for the financial commitments. The City has a special standing to influence the actual decisions and scope of work. At this time, the City is not required to provide comment but it is in its best interest to do so.

Council asked about the City's options if NEPA comes back with issues. Mr. Summerfelt indicated that the City does have alternatives; one of the benefits of being at the table is that the City is able to watch and influence and help direct the alternatives to meet its needs.

Mr. Summerfelt clarified that the campfire closure order is a permanent order in the Dry Lake Hills area.

Council asked for clarification in reference to the three forest plan amendments, noting it was not clear whether the requirement for the forest plan amendments is actually contingent upon the content of the revised forest plan as the new forest plan may address the requested amendments. Mr. Summerfelt will clarify that and get back to Council.

Council asked about the contractors that are used, and if there would be a variety or just one 4FRI contractor. Mr. Summerfelt indicated that it could be one 4FRI contractor, but it is likely that 4FRI will employ several subcontractors.



There have been a number of discussions on what procurement process would be best to use. The City has a lot of options with regards to procurement and this allows for maximum efficiency.

**Mayor Nabours moved to approve the official public comment regarding the Proposed Action for the Flagstaff Watershed Protection Project as submitted; seconded; passed unanimously.**

**15. DISCUSSION ITEMS**

None

**16. PUBLIC PARTICIPATION**

None.

**17. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

Councilmember Oravits stated that he had attended the Graffiti Busters launching on Friday and he was excited to see the project get off the ground.

Councilmember Brewster reminded the Council that Northern Arizona University's graduation was this coming Friday and Saturday, there will be a lot of traffic and people in town.

Councilmember Barotz attended a meeting at Mount Elden Middle School that was put together by Paul Kulpinski. Mr. Kulpinski brought in the woman from the City of Tempe who pioneered the concept of business improvement districts. There were property and business owners from the Fourth Street area.

Councilmember Barotz also asked the Council to reconsider the options for the four-hour water policy meeting. She would like to have the meeting later in the day to allow for better public attendance and transparency. Council was in agreement of this suggestion and asked staff to look for alternative dates with a meeting time of 4:00 p.m. - 8:00 p.m.

Mayor Nabours also acknowledged the upcoming NAU graduation and offered appreciation at including the City in the ceremony by having the Mayor sit on stage during graduation.

Mayor Nabours requested a future agenda item to discuss possible amendment to the Resolution that adopted the Parks and Recreation Master Plan. The resolution establishes priorities and he did not recall doing this. Council agreed to add this to a future agenda item.

Vice Mayor Evans offered congratulations to the Dewey Decimal Divas who were the winners of the local spelling bee.

Vice Mayor Evans and Councilmember Woodson will not be at the meeting next Tuesday.

The Flagstaff City Council Meeting of May 7, 2013, adjourned at 7:45 p.m.

ATTEST:

CITY CLERK

## CERTIFICATION

STATE OF ARIZONA) ) ss.  
County of Coconino )

Dated this 21st day of May, 2013.

CITY CLERK

## MINUTES

WORK SESSION  
TUESDAY, MAY 14, 2013  
COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
6:00 P.M.

### 1. Call to Order.

Mayor Nabours called the Work Session of May 14, 2013, to order at 6:09 p.m.

### 2. Pledge of Allegiance.

The City Council and audience recited the Pledge of Allegiance.

### 3. Roll Call

#### Councilmembers present:

MAYOR NABOURS  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER BREWSTER  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON

#### Councilmembers absent:

VICE MAYOR EVANS  
COUNCILMEMBER WOODSON

Others present: City Manager Kevin Burke; Interim City Attorney Michelle D'Andrea

### 4. Public Participation (Non-Agenda Items Only):

Public Participation enables the public to address the council about items that **are not** on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

#### A. PRESENTATION OF CITIZENS HEROISM AWARDS

Mayor Nabours asked Chad Stiller, Chad Hett, Margo Neff, Wayne Anderson, and James Yates to come forward. He said that on Friday March 29, 2013, this group of city employees was engaged in a workout at Francis Short Pond. While there they witnessed an extremely strong whirlwind engulf a woman, her child and another child in a baby stroller. The whirlwind pushed the baby stroller into the pond upside down. While two members entered the water and unbuckled the child from the stroller the others called 9-1-1 and helped to calm the lady. The prompt action of these individuals directly saved the life of the child.

The Mayor and Council, along with Fire Chief Iacona and Deputy Fire Chief Jerry Bills, thanked them and presented each of them with a plaque honoring their action.

Interim City Attorney Michelle D'Andrea addressed the Council to introduce, Bill Burke, the new City Prosecutor who comes to Flagstaff from the City of Mesa with 17 years experience.

Bill Burke addressed the Council and introduced himself, stating that he was excited to be in Flagstaff.

**5. Preliminary Review of Draft Agenda for the May 21, 2013 City Council Meeting. \***

*\* Public comment on draft agenda items may be taken under "Review of Draft Agenda Items" later in the meeting, at the discretion of the Mayor. Citizens wishing to speak on agenda items not specifically called out by the City Council for discussion under the second Review section may submit a speaker card for their items of interest to the recording clerk.*

Councilmember Overton requested clarification on item 10C, and whether the Council was approving a new lease or amending the current lease. Mr. Burke offered that the IGA that is being considered will incorporate the amendments and the new lease into one document.

**6. Presentation on the Citizen Request Tracker (a.k.a. "Report a Concern") online tools.**

David Sullivan, Management Intern, provided Council with a tutorial on how to use the Citizen Request Tracker (CRT) online. He said the web based tool went live in 2012. It allows for the submission of citizen concerns through the City's website, additionally the system tracks the concern and notifies the appropriate staff when concerns are received.

Mr. Sullivan then provided Council with a step by step tutorial on the CRT iphone app, noting that the same process can be submitted by using the app and the app can be downloaded for free from the iTunes web store.

Council asked that this tool be advertised on the website and in the next issue of CityScape.

**7. 2013 Wildfire Update.**

Deputy Chief Bills introduced Wildland Fire Manager Paul Summerfelt. Mr. Summerfelt provided a PowerPoint presentation that gives an overview of the City's wildfire preparedness.

Coconino County Emergency Manager Robert Rowley continued the presentation with information about the Emergency Operations Center. He also presented information on E928.org, which is a grant funded activity put together by KNAU and the Arizona Daily Sun that will be a central place for information. This website would allow for a central location for the public to access the most up to date information available concerning emergency issues in the area.

Police Lieutenant Frank Higgins continued the presentation with updates on the law enforcement of fire threat as well as an update on the Woods Watch program.

Mr. Burke offered that the flyovers that are being conducted are a great City/County partnership and have been influential in removing the fire threat out of the forests.

Fire staff member of Coconino National Forest Don Muise continued the presentation with information about tools and resources available to the area should a fire event occur as well as fire prevention strategies. He indicated that fire restrictions will most likely go into effect by next Wednesday that prohibit smoking in the forest and campfires outside of designated camping areas.

Beverly Loomis, resident, thanked the Forest service for the restrictions.

The following individuals addressed the Council about the need for a recurring, seasonal campfire and smoking restriction:

- Luann Meek, resident
- Cam McCauly, resident
- Steve Caulkins, County resident and President of Black Bill Park Neighborhood Association, representing 1100 homes in the Shultz fire area

Council asked about the criteria the Forest Service looks for with regard to fire restrictions. Mr. Muise offered that the Regional Forester has chosen not to go with a set date restriction as it comes with implications to both sides of the issue. They have relooked at the science of how we get to certain levels and partner that with the human side. Fire restrictions are just one tool and there are other tools that are as effective, campfires are not the only thing to cause wildfire.

Council asked about the trees throughout the community that are dying as a result of salt use in the winter. There is concern that this is a growing problem that fuels the fire risk. Council would like to discuss this issue further at a future meeting; possibly a joint meeting with the Department of Transportation as they are involved as well.

Mr. Summerfelt agreed that the trees are a growing problem and it is manifested at an increased rate in and outside the City. The City is in the process of identifying trees in town as a current or future threat and working with Public Works and others to develop a strategic plan to deal with the issue.

Council asked how the Forest Service analyzes when to remove the restrictions. Mr. Muise indicated that it is dependent upon adequate rain, well distributed and a continued trend as such. They also look at what is happening elsewhere in the country as that could impact the resources available if they do have a fire event.

A break was taken between 7:38 p.m. and 7:48 p.m.

**8. Discussion of Possible Feeding of Wildlife Ordinance.**

Mayor Nabours introduced Larry Phoenix, Arizona Game and Fish Field Supervisor, who presented a PowerPoint presentation on the merits of having a wildlife ordinance.

Council clarified that there is no violation until after being notified by an officer. Mr. Phoenix indicated that the intent is not to cite and fine people for feeding wildlife, it is more to educate people about the ramifications of doing so and to stop the blatant feeding. The ordinance would give Game and Fish tools to deal with those who chose not to comply; however, there has only been one citation issued in the state.

The following people spoke against the ordinance:

- Joe Farnsworth
- Dianne Jarvis
- Sophia Katz

The following people spoke in favor of the ordinance:

- Jake McCarthy
- Louis Diesel

A majority of Council agreed to move forward with the drafting of an ordinance. The draft ordinance will be forwarded to the City Attorney, Police Department and Municipal Court for review and then scheduled for a later work session for discussion.

Council would like to see the issue of game fences addressed in the ordinance as well as options in the penalty section that include some language that speaks to the intent of the process and a structure of penalties; other options besides onerous fines.

Council would also like to include the County in the discussion but independently of the ordinance, as this is an issue that affects them as well.

Councilmember Overton left the meeting at 8:52 p.m.

A break was taken between 8:52 p.m. and 8:57 p.m.

Mayor Nabours rearranged the order of the agenda, noting that item 11-A and 11-B will be discussed next, followed by item 10.

**11. Review of Draft Agenda Items for the May 21, 2013 City Council Meeting.\***

*\* Public comment on draft agenda items will be taken at this time, at the discretion of the Mayor.*

- \*A. Consideration and Adoption of Resolution No. 2013-10 : A resolution of the City Council of the City of Flagstaff, Arizona, declaring as a public record THOSE certain documents filed with the City Clerk entitled the "2012 International Family of Codes, and the 2013 Amendments to City Code, Title 4, Building Regulations, and the ICC A117.1 Accessible and Usable Buildings and Facilities Standard, 2009 Edition"; which includes the International Building Code 2012 Edition; International Residential Code, 2012 Edition; International Plumbing Code, 2012 Edition; International Mechanical Code, 2012 Edition; International Fuel Gas Code, 2012 Edition; International Existing Building Code, 2012 Edition; International Energy Code, 2012 Edition; ICC A117.1, Accessible and Usable Buildings and Facilities Standard, 2009 Edition; and providing for amendments, additions, and deletions thereto. (ITEM 10-E OF THE 5/21/2013 DRAFT AGENDA)**
- \*B. Consideration and Adoption of Ordinance No. 2013-12 : An ordinance of the City Council of the City of Flagstaff, Arizona, adopting the "2012 International Family of Codes, and the 2013 Amendments to City Code, Title 4, Building Regulations, and the ICC A117.1 Accessible and Usable Buildings and Facilities Standard, 2009 Edition" by reference and fixing the effective date thereof; repealing all sections of said code in conflict with this ordinance; preserving rights and duties that have already matured and proceedings that have already begun there under and providing penalties for the violation thereof. (ITEM 10-F OF THE 5/21/2013 DRAFT AGENDA)**

Mike Scheu, Building Official, offered a PowerPoint presentation that gave a brief history of the building codes, how the amendments were created and the process and timeline to adopt them.

He said the purpose of the resolution is to adopt the code books and amendments as a public record. Adopting the ordinance is a separate matter.

Council is concerned about the availability of the documents. Some are hesitant to adopt an ordinance without first reviewing the documents. More time would be appreciated for review.

For purposes of insurance and flood ratings, the code and amendments must be adopted by July.

Council agreed to hear and consider the resolution at the next Council meeting with the review and possible first reading of the ordinance and public hearing on June 4, 2013. This would provide time to review the documents and if there are provisions, comments, or additional amendments they can be discussed at the public hearing.

Council asked staff to put together a chart that shows the 2012 code and the proposed amendments.

Mayor Nabours asked if the Flagstaff Chamber of Commerce was planning on weighing in on this. Mike Sistik indicated that the Flagstaff Chamber will review and provide comment.

Gabor Kofax, resident, addressed Council and asked them not to rush into anything and urged them to research Agenda 21 as it is more focused on issues of energy control.

**9. Presentation on the City of Flagstaff's Procurement Code Manual.**

Purchasing Director Rick Compau provided a PowerPoint presentation to Council about the proposed procurement manual.

Council decided that a Special Meeting would be a better forum for discussion of this item especially since three Councilmembers were not at the meeting. Council asked staff to isolate the policy questions from the entire manual for presentation at the special meeting.

**10. Review of Boards and Commissions.**

Mayor Nabours asked if Council would like to do this discussion as a special meeting. The intent is to look at each board and commission, what they do, how they are structured, etc.; this could take several hours.

Council agreed to hold a special meeting and have the staff liaison and chairperson of each board or commission present and prepared to tell the Council what they see as the role of their board or commission, and their operations and tasks.

**12. Public Participation**

None.

**13. Informational Items To/From Mayor, Council, and City Manager.**

Councilmember Brewster announced that this coming Thursday evening United Way is celebrating their VITA program.

Councilmember Brewster reported that she will be attending a NAIPTA TAC meeting tomorrow with Councilmember Barotz.

Mr. Burke reminded Council about the upcoming special meeting on Monday, May 20, 2013, to continue discussion on the rezoning process.

Mr. Burke also reported that the Kite festival was well attended and a great event.



**14. Adjournment**

The Work Session of the Flagstaff City Council held May 14, 2013, adjourned at 9:55 p.m.

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MAYOR

ATTEST:

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CITY CLERK

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** James Duval, Sr. Project Manager  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



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### TITLE:

**Consideration of Construction Manager at Risk Contract:** Street Maintenance Program 2013: Cedar Avenue 2010 Bond Improvements.

### RECOMMENDED ACTION:

- 1) Award Guaranteed Maximum Price Contract #4 (GMP #4) to the Construction Manager at Risk (CMAR) Contract with C and E Paving and Grading, LLC in an amount not to exceed \$750,000.00. The contract period is 60 calendar days; and
- 2) Authorize the City Manager to execute the necessary documents.

### Policy Decision or Reason for Action:

- o Provide for annual pavement maintenance of City streets and implement utility improvements as authorized by the Special Debt Authorization Election of November 2010.
- o Staff requests that Council authorize a not-to-exceed-construction-contract amount of \$750,000, while GMP negotiations and design are being finalized (with C&E Paving, the City's current Street Maintenance Program contractor). Staff also requests Council to authorize the City Manager to execute the necessary final documents as long as the final GMP amount is equal to or less than \$750,000. Staff makes this unusual request in order to proceed with the work this construction season so as to limit interim repair costs should we have to go through another winter, and to complete the work by start of the FUSD school year in mid-August.

### Financial Impact:

The Cedar Avenue 2010 Bond Improvement Project is funded by the total budget appropriation of \$689,169 (includes FY12 and FY13 prior year expenditures and recommended FY14 budget amount of \$676,375) for the voter approved Street/Utility Bond Program (acct. 403-2442-691). The remainder of the total project costs are recommended to be funded by the Transportation Tax and Utility funds in an amount not to exceed \$207,000 (split on a 50-50 basis).

### Connection to Council Goal:

1. Repair Replace maintain infrastructure (streets & utilities)

### Has There Been Previous Council Decision on This:

Yes, Council approval of the Special Debt Authorization Election held in November 2010 and authorizing General Obligation bonds to fund Street and Utilities Improvements in a principal amount up to \$16,500,000 total.

### **Options and Alternatives:**

- 1) Approve the award as recommended
- 2) Reject approval of award and direct staff to complete the design and GMP negotiation.
- 3) Reject approval of the award and direct staff to pursue traditional design-bid-build project delivery. This would delay progress on the project into the calendar year 2014 construction season.

### **Background/History:**

On May 7, 2013, Council approved award of the Construction Manager at Risk Street Maintenance Contract for the 2013 street maintenance program to C and E Paving and Grading, LLC. The contractor has successfully completed contract work through GMP #1 and #2; GMP #1 for the 4<sup>th</sup> Street overlay, GMP#2 for the 2012 Street Maintenance Program. GMP#3, as approved on May 7<sup>th</sup>, 2013, is for the 2013 Street Maintenance program in the current construction season.

This award is for GMP #4 to complete street maintenance and minor utility improvements on Cedar Avenue between Fourth Street and West Street. The construction will include asphalt mill and overlay, infill and repair of sidewalk/curb/gutter, replacement of water and sewer services and a minor waterline and sewer line connections. The GMP will include costs for construction, construction fee, costs for General Conditions (including bonds and insurance), sales taxes, and contingency funds.

### **Key Considerations:**

The goal of the Street/Utility Bond Improvements is to use the voter approved funds to improve and repair City infrastructure. This contract utilizes a completed selection process which conserves City resources and expedites the construction schedule during the prime summer construction season.

### **Expanded Financial Considerations:**

Project expenditures will be funded by the current total budget appropriation of \$689,169 for 2010 Bond Projects (acct 403-2442-691) and will be supplemented with Transportation Tax **AND UTILITY Funds (SPLIT ON A 50-50 BASIS)** in an amount not to exceed \$207,000 (~~acct. 040-9253-607~~). **THE TOTAL PROJECT BUDGET IS \$896,169 AND STAFF IS ASKING MAYOR AND COUNCIL TO APPROVE \$750,000 FOR CONSTRUCTION OF THIS PROJECT.**

The financial goal is to exhaust all 2010 Street-Utility Bond funds before using any Transportation Tax funding to supplement project funding. Contingency funds are in place (Contractor and Owner) in the CMAR GMP for the Beaver/Leroux 2010 Bond Project. Staff has yet to award construction contracts for the La Plaza Vieja 2010 Bond Project and the Rose Avenue 2010 Bond Project. These projects are traditional design-bid-build projects (hard bid) and construction bids are expected to be below the engineer's estimate. In addition, staff has not completed GMP negotiations for the Cedar Avenue 2010 Bond Project. Should Transportation Tax funding be required, the funds would be available in the West/Arrowhead PH II budget appropriation in FY14 that is a result of the hard bid amount coming in lower than the engineer's estimate.

### **Community Benefits and Considerations:**

The Street Maintenance Program provides surface treatments to preserve and maintain the pavement condition of City streets. The ADA (Americans with Disabilities Act) improvements provide improved access for disabled citizens and visitors along existing streets and provide compliance with Federal requirements.

**Community Involvement:**

In June 2010, the Council approved ballot language for the Special Debt Authorization Election held in November 2010. Voter approval authorized the City to sell and issue general obligation bonds to fund Street and Utilities Improvements in a principal amount up to \$16,500,000.

**Expanded Options and Alternatives:**

- 1) Approve the award as recommended
  - 2) Reject approval of award and direct staff to complete the design and GMP negotiation.
  - 3) Reject approval of the award and direct staff to pursue traditional design-bid-build project delivery.
- This would delay progress on the project into the calendar year 2014 construction season.

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**Attachments:**     [Vicinity Map](#)  
                             [Chart](#)  
                             [Sample CMAR Contract](#)





1 inch = 249 feet



Map and Data is a Product of the City of Flagstaff  
GIS Section  
211 West Aspen Ave  
Flagstaff, AZ 86001  
(928) 213-2850



## 2010 Street/Utility Bond Program UPDATE

13-May-13

	<i><b>Project</b></i>	<i><b>Status</b></i>	<i><b>Total Cost</b></i>
1	<b>Izabel Street</b>	Complete	\$525,324
2	<b>Sunnyside Phase V-B</b>	Complete	\$536,717
3	<b>Franklin / Mohawk</b>	Complete	\$1,507,075
4	<b>Beulah Blvd. Overlay</b>	Complete	\$1,039,558
5	<b>Fourth Street Overlay</b>	Complete	\$1,371,292
6	<b>Dodge Avenue</b>	Warranty	\$1,101,396
7	<b>Cherry Avenue</b>	Warranty	\$1,217,942
8	<b>Coconino / Elden / Humphreys</b>	Construct 2012-2013	\$2,077,738
9	<b>S. Beaver / S. Leroux</b>	Construct 2013	\$2,696,391
10	<b>La Plaza Vieja</b>	Construct 2013	\$2,118,044
11	<b>Cedar Avenue Overlay</b>	Construct 2013	\$689,169
12	<b>Rose Avenue</b>	Construct 2014	\$1,606,525
	<b>*Bond Premium Issuance Costs</b>		\$56,517
		<b>TOTAL:</b>	<b>\$16,543,688</b>

Total Amount of Bond Premium	\$55,099
Total Amount of Bond Available	\$16,555,099
Amount Difference	\$11,411

\* \$143,832 of bond issuance costs  
included in the total project amount for 4th  
Street Overlay



## City of Flagstaff, Arizona

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### Project Name

# CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES

PROJECT NO.

Agreement No.

MAYOR

CITY COUNCIL

CITY MANAGEMENT

City Manager

Utilities Director

Community Development Director

Public Works Director

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## CITY OF FLAGSTAFF, ARIZONA

### Project Name

## CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES AGREEMENT

### PROJECT No. ; Agreement No.

This Construction Services Agreement ("Agreement"), is made and entered into by and between the City of Flagstaff, an Arizona municipal corporation ("City"), and [REDACTED] ("Construction Manager at Risk" or CM@Risk) on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

### RECITALS

- A. The City is authorized and empowered by provisions of the City Charter to execute agreements for construction services.
- B. The City intends to construct [REDACTED] as more fully described in Exhibit "A" attached ("Project").
- C. To undertake the construction administration of the Project the City has entered into a separate agreement with [REDACTED] ("Design Professional.")
- D. CM@Risk has represented to the City that it has the ability to provide construction services for the Project, and based on this representation, the City hereby engages CM@Risk to provide these services and construct the Project.
- E. Agreement # [REDACTED] has been executed previously between the City and CM@Risk to perform design phase services for the Project. Those services may continue during the duration of this Agreement.

***NOW THEREFORE***, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CM@Risk as follows:

### Article 1 - Definitions

"Agreement" - This written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in, or attached to, and made part of this Agreement.

"Change Directive" - A written order prepared and signed by the City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Change Order" - A type of Contract amendment issued after execution of the Contract Documents or future GMP Amendments signed by the City and CM@Risk, agreeing to changes to a GMP, for substantial unanticipated alterations in the character of Work. The Change Order shall state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Agreement terms.

"The City ("Owner" or "OWNER")" - The City of Flagstaff, a municipal corporation, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Flagstaff Community Development, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" - The person designated in Subsection 8.3.1.2.

"City's Senior Representative" - The person designated in Subsection 8.3.1.1.

"CM@Risk" - The firm selected by the City to provide construction services as detailed in this Agreement.

"CM@Risk's Contingency" - A fund to cover cost growth during the Project used at the discretion of CM@Risk usually for costs that result from project circumstances. The amount of CM@Risk's Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CM@Risk's Contingency is described in Subsection 5.3.1.

"CM@Risk's Representative" - The person designated in Subsection 8.3.2.2.

"CM@Risk's Senior Representative" - The person designated in Subsection 8.3.2.1.

"Construction Documents" - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the "Construction Documents" herein or in an Exhibit or Addendum which is attached hereto.

"Construction Fee" - CM@Risk's administrative costs, home office overhead, and profit as applicable to this Project whether at CM@Risk's principal or branch offices.

"Contract Documents" - The following items and documents in descending order of precedence executed by the City and CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Contract Price" - The amount or amounts set forth in Article 5.

"Contract Time" - The days, as set forth in Article 4, the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

"Cost of the Work" - The direct costs necessarily incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Costs, and taxes.

"Critical Path Method" - A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest total time required to complete the Project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

“Day(s)” - Calendar days unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” - The agreement between the City and CM@Risk for Services provided by CM@Risk during the design phase which may include the following: design recommendations, Project scheduling, constructability reviews, alternate systems evaluation, cost estimate, Minority Business Enterprise/Woman’s Business Enterprise/Small Business Enterprise (**“MBE/WBE/SBE”**) utilization, subcontractor bid phase services, GMP preparation and other services set forth in this Agreement or reasonably inferable therefrom.

“Design Professional” - A qualified, licensed design professional who furnishes, design, construction documents, and/or construction administration services required for the Project.

“Differing Site Conditions” - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Completion” - 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner’s Project specifications and Owner training/start up activities.

“Float” - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” - Includes, but is not limited to the following types of costs for CM@Risk during the construction phase: (i) payroll costs for Project manager or CM@Risk for work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of CM@Risk or Subcontractors.

“Guaranteed Maximum Price” or “GMP” - The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency.

“GMP Plans and Specifications” - The plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Legal Requirements” - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Notice to Proceed” or “NTP” - The directive issued by the City, authorizing CM@Risk to start Work.

“Owner’s Contingency” - A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen Site conditions. The amount of the Owner’s contingency shall be set solely by the Owner and shall be in addition to the Project costs included in CM@Risk’s GMP packages. Use and management of the Owner’s contingency is described in Section 5.3.2.

"Performance Period" - The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Master Schedule.

"Payment Request" - The City form used by CM@Risk to request progress payments for Work in accordance with Article 7.

"Product Data" - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CM@Risk to illustrate materials or equipment for some portion of the Work.

"Project" - The work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit "A" attached.

"Project Record Documents" - The documents created pursuant to Section 2.10.

"Samples" - Physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work shall be evaluated.

"Schedule of Values" - A statement furnished by CM@Risk to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating CM@Risk's applications for progress payments.

"Shop Drawings" - Drawings, diagrams, schedules and other data specially prepared for the Work by CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" - Land or premises on which the Project is located.

"Specifications" - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subcontractor" - An individual or firm having a direct Agreement with CM@Risk or any other individual or firm having an Agreement with the aforesaid Contractors at any tier, who undertakes to perform a part of the construction phase Work for which CM@Risk is responsible.

"Submittals" - Documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

"Substantial Completion" - The established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or its representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review.

"Supplier" - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct agreement with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

"Work" - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **Article 2 - CM@Risk's Services and Responsibilities**

**2.0** CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work shall be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Flagstaff, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents. It is not required that the services be performed in the sequence in which they are described.

### **2.1 General Services**

**2.1.1.** CM@Risk's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with the City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of the City.

### **2.2 Government Approvals and Permits**

**2.2.1** Unless otherwise provided, CM@Risk shall obtain all applicable and/or necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. CM@Risk is specifically reminded of the need to obtain the applicable and/or necessary environmental permits or file the applicable and/or necessary environmental notices.

**2.2.2** Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

**2.2.3** City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City shall also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

**2.2.4** CM@Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.3.3 above.

**2.2.5** CM@Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are CM@Risk's responsibility.

### **2.3 Pre-construction Conference**

**2.3.1** Prior to the commencement of any Work, the City's Representative or designee shall schedule and conduct a Pre-construction conference.

- 2.3.2** The purpose of this conference is to establish a working relationship between CM@Risk, utility firms, and various City agencies. The agenda shall include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction.
- 2.3.3** The Notice to Proceed date shall be concurred with by the parties or set by the City at the Preconstruction Conference. After the meeting and upon receipt of a signed Agreement and delivery of the required bonds and insurance in a City approved format, a Notice to Proceed letter shall be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion shall be listed and/or as set forth in Article 1 herein. Failure by CM@Risk to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it shall not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.
- 2.3.4** CM@Risk shall provide a Schedule of Values based on the categories used in the buy out of the Work but not greater than the approved GMP and identifying CM@Risk's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work. The Schedule of Values shall contain sufficient detail to identify each individual element of the Work and shall relate to the approved GMP Schedule. The Schedule of Values shall be subject to approval by the City's representative.
- 2.3.5** Minimum attendance by CM@Risk shall be CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and CM@Risk's safety officer.

## **2.4 Control of the Work**

- 2.4.1** Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate Contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.
- 2.4.2** CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.4.3** CM@Risk's Representative or CM@Risk's Superintendent shall be present at the Site at all times that construction activities are taking place.
- 2.4.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.4.3.2** In the event of noncompliance with this Section, the City may require CM@Risk to stop or suspend the Work in whole or in part.
- 2.4.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CM@Risk's responsibility to ensure the Subcontractor employed for such work, is approved by the manufacturer.
- 2.4.5** Before ordering materials or doing work, CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements.

No extra charge or compensation shall be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the City for resolution before proceeding with the work.

- 2.4.6** CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.
- 2.4.7** CM@Risk shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.
- 2.4.8** Any person employed by CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. CM@Risk or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this Section.
- 2.4.9** CM@Risk assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.4.10** CM@Risk shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.5 Control of the Work Site**
- 2.5.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the City to occupy the Project or a portion of the Project for its intended use.
- 2.5.2** CM@Risk shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality rules and regulations.
- 2.5.3** CM@Risk shall maintain ADA, ADAAG and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA, ADAAG and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.5.4** Only materials and equipment, which are to be used directly in the Work, shall be brought to

and stored on the Site by CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of CM@Risk.

## **2.6 Shop Drawings, Product Data and Samples**

- 2.6.1** Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which Submittals are required, the way CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.6.2** CM@Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar Submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit "B" as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by CM@Risk, which are not required by the Contract Documents, may be returned without action.
- 2.6.3** CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective submittal has been approved by the City or City's designee. Such Work shall be in accordance with approved Submittals.
- 2.6.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar Submittals, CM@Risk represents that CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- 2.6.5** CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City 's approval of Shop Drawings, Product Data, Samples or similar Submittals unless CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by the City's approval thereof.
- 2.6.6** CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the City on previous Submittals.
- 2.6.7** Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- 2.6.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.7 Quality Control, Testing and Inspection**

- 2.7.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- 2.7.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.



- 2.7.3** The procedures and methods used to sample and test material shall be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with the most recently adopted edition of the City of Flagstaff Engineering Division Design and Construction Standards and Specifications.
- 2.7.4** The City shall select a City or Independent Testing Laboratory and shall pay for initial City Acceptance Testing.
- 2.7.4.1** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, shall be paid for by CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.
- 2.7.4.2** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.7.5** CM@Risk shall cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.7.6** At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.7.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CM@Risk, unless otherwise provided in the Contract Documents.
- 2.7.8** CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk and paid by CM@Risk.

## **2.8 Trade Names and Substitutions**

- 2.8.1** Unless indicated that no substitutions are permitted, CM@Risk may request a substitution or alternative to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, subject to the following:
- 2.8.2** The substitution shall be submitted by CM@Risk in writing to the City.
- 2.8.3** CM@Risk shall certify that the substitution shall perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.8.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.8.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.8.6** CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.8.7** The City shall make the final decision and shall notify CM@Risk in writing as to whether the substitution has been accepted or rejected.

**2.8.8** If the City does not respond in a timely manner, CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.

## **2.9 Project Record Documents**

**2.9.1** During the construction period, CM@Risk shall maintain at the Site a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

**2.9.1.1** CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
- Addenda and other details not on original Agreement Drawings.

**2.9.1.2** CM@Risk shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

**2.9.1.3** CM@Risk shall mark Project Record Drawings sets with red erasable colored pencil.

**2.9.1.4** CM@Risk shall note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

**2.9.1.5** CM@Risk shall, as a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.

**2.10.2** Upon receipt of the reviewed Project Record Drawings from the City, CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

**2.10.2.1** CM@Risk shall provide a complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Flagstaff CADD technology. The Design Professional shall provide files of the original Construction Documents to CM@Risk for the use of preparing these final Project Record Drawings or CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

**2.10.2.2** CM@Risk shall provide a complete set of reproducible mylars from the final AutoCAD drawings.

**2.10.2.3** CM@Risk shall provide the original copy of the Project Record Drawings (redline mark-ups).

## **2.10 Project Safety**

- 2.11.1** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.2** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.3** CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.11.4** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.
- 2.11.5** CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.11.6** CM@Risk shall immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.7** CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.11 Warranty**

- 2.12.1** CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2** CM@Risk's warranty obligation shall be for one (1) year, except for such greater period as may be required by the technical specifications.
- 2.12.3** Nothing in this warranty is intended to limit any manufacturer's warranty which provides The City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk shall provide City with all manufacturers' warranties upon Substantial Completion.
- 2.12.4** Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

## **2.13 Correction of Defective Work**

- 2.13.1** CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, or as may be available to the City by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.2** During the performance of the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City or as discovered by CM@Risk. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the performance of the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces.
- 2.13.3** CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 and/or Section 2.13.1 above, within seven (7) days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven-day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces.
- 2.13.4** If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.5** For nonconforming Work that creates an emergency requiring an immediate response, CM@Risk shall respond and initiate corrections within twenty-four hours.
- 2.13.6** The one year period referenced in Subsection 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work relative to the warranty set forth in that section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding CM@Risk's other obligations under the Contract Documents or as may be allowed by law.

## **Article 3 - The City's Services and Responsibilities**

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### **3.1 Duty to Cooperate.**

- 3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.2** City shall furnish at CM@Risk's request, at no cost to CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with The City of Flagstaff CADD technology.

## **3.2 The City's Representative**

- 3.2.1** City's Representative shall be responsible for providing City (as defined in Article I) supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.
- 3.2.2** City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.
- 3.2.3** The City may utilize field inspectors to assist the City's Representative during construction in observing performance of CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to Section 2.8.4.
  - 3.2.3.1** The field inspector shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
  - 3.2.3.2** The field inspector shall not be authorized to issue instructions contrary to the Construction Documents or to act as foreman for CM@Risk.
  - 3.2.3.3** The field inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
  - 3.2.3.4** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CM@Risk's failure to perform the work in accordance with Contract Documents.

## **3.3 Design Professional Services**

- 3.3.1** The City may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Agreement as well as other firms hired by the City shall be available for review by CM@Risk. CM@Risk shall not have any right however, to limit or restrict any contract provisions and/or modifications that are mutually acceptable to the City and Design Professional.
- 3.3.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.
  - 3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
  - 3.3.2.2** Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional shall keep the City informed of progress of the Work and any noted defects and deficiencies of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction, which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.8.
  - 3.3.2.3** Review and recommend approval of Payment Requests.

- 3.3.2.4** Review and approve or take other appropriate action upon CM@Risk's Submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
- 3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** Prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.6.1.
- 3.3.2.7** Conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by CM@Risk.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.
- 3.5** **Permit Review and Inspections**
- 3.5.1** If requested by CM@Risk, the City's Representative shall provide assistance and guidance in obtaining necessary reviews, permits and inspections, however, the responsibility for obtaining the necessary reviews, permits and inspections remains with CM@Risk.
- 3.5.2** Regulating agencies of the City, such as Community Development, Fire, Planning, Building Inspection, Environmental Services, and Engineering Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

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## Article 4 - Contract Time

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- 4.0** **Contract Time.**
- 4.0.1** Contract Time shall start with the Notice to Proceed ("NTP") with construction services and shall end with Substantial Completion.
- 4.0.2** Where there is more than one GMP, each GMP shall establish a separate NTP date and a Performance Period. The Performance Periods for individual GMPs may be sequential or concurrent as established in the individual Notices to Proceed. The Performance Period for the GMP under this Agreement shall be        days starting with the NTP.
- 4.0.3** CM@Risk agrees that it shall commence timely performance of the Work and shall achieve substantial completion within the Performance Periods and Contract Time.
- 4.0.4** All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.
- 4.0.5** Time is of the essence, for times and time matters set forth in Article 4 and the rest of this Agreement.

#### **4.1 Substantial Completion**

- 4.1.1** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter or as may be mutually agreed by the parties in writing. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.
- 4.1.2** Prior to notifying the City in accordance to Section 4.1.3 below, CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of CM@Risk to complete all Work in accordance with the Contract Documents.
- 4.1.3** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4** Within five (5) days of City's receipt of CM@Risk's notice, the City and CM@Risk shall jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that shall set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.1.6** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy shall not interfere with CM@Risk's completion of the remaining Work.
- 4.2** **Final Completion.** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.1.5. The City shall issue a Final Completion Letter and payment pursuant to Section 7.5.

#### **4.3 Liquidated Damages**

- 4.3.1** CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City \$\_\_\_(to be determined on an agreement by agreement basis) per day as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.
- 4.3.2** CM@Risk understands that if Final Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Final Completion is not attained within the Contract Time as adjusted,

CM@Risk shall pay the City \$\_\_\_\_ (to be determined on an agreement by agreement basis) per day as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

#### **4.4 Project Master Schedule**

**4.4.1** The Project Master Schedule approved as part of a GMP shall be updated and maintained throughout the Work by CM@Risk.

**4.4.2** The Project Master Schedule shall be revised by CM@Risk as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

**4.4.3** Updated Project Master Schedules shall be submitted monthly by CM@Risk to the City as part of the Payment Request.

**4.4.3.1** CM@Risk shall provide City with a monthly status report with each Project Master Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

**4.4.3.2** With each schedule submittal CM@Risk shall include a transmittal letter including the following:

- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and/or the date of Substantial Completion.
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Time Extension requests
  - Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of calendar days ahead.
  - If behind schedule, the number of calendar days behind.
- Other project or scheduling concerns

**4.4.4** City's review of and response to the Project Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**4.4.5** The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.



- 4.4.5.1** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.4.5.2** The CPM diagram schedule shall indicate all relationships between activities.
- 4.4.5.3** The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.4.5.4** The CPM diagram schedule shall be based upon activities, which would coincide with the Schedule of Values.
- 4.4.5.5** The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.
- 4.4.5.6** The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CM@Risk activities.
- 4.4.5.7** The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.
- 4.4.6** The Project Master Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.4.7** Float time shall be as prescribed below:
- 4.4.7.1** The total Float within the overall schedule, is not for the exclusive use of either the City or CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.
- 4.4.7.2** CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date and then only if any such extensions or damages are shown to be justified under the Contract Documents.
- 4.4.7.3** Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path Submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to CM@Risk, etc.). In such an event, CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## **Article 5- Contract Price**

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**5.0** CM@Risk agrees at his own cost and expense, to completely construct and install all Work and materials as called for by this Agreement, free and clear of all claims, liens and charges whatsoever, in the manner and under the conditions specified in the Contract Documents, within the time or times stated in the approved Guaranteed Maximum Price (GMP).

### **5.1 Contract Price**

**5.1.1** The Contract Price shall be as approved in the Guaranteed Maximum Price Proposal attached as Exhibit "B" and an amount of \$\_\_\_\_\_ with an additional \$\_\_\_\_\_ allowed for Owner's Contingency.

**5.1.2** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

**5.1.3** The General Conditions Costs and the Construction Fee are firm fixed lump sums delineated in the GMP.

**5.1.4** Taxes are deemed to include all sales, use consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

### **5.2 Guaranteed Maximum Price**

**5.2.1** The Guaranteed Maximum Price is composed of the maximum Cost of the Work; the Construction Fee; General Conditions Costs; taxes; and, CM@Risk's contingency all of which are not-to-exceed cost reimbursable or lump sum amounts defined in Articles 5.1 and 5.3. CM@Risk is at risk to cover any additional Project costs. If the Cost of Work amount, set forth in the GMP, is in excess of the actual Cost of Work and/or CM@Risk's Contingency, said amount by which the Cost of Work set forth in the GMP is in excess of the actual Cost of Work and/or CM@Risk's Contingency, shall revert to the City.

**5.2.2** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.

**5.2.3** GMP amendments are cumulative except for CM@Risk's Contingency. The amount of CM@Risk's Contingency for each GMP shall be negotiated separately.

**5.2.4** If the GMP requires an adjustment due to changes in the scope of the Work the cost of such changes is determined subject to Article 6. The markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

### **5.3 Contingencies**

**5.3.1** CM@Risk's Contingency is an amount CM@Risk may use at its sole discretion for, an increase in the Cost of Work, and may use for increases in General Conditions Costs with written approval of the City. CM@Risk's Contingency is assumed to be a direct Project cost and all applicable markups shall be applied at the time of GMP submission.

**5.3.1.1** When CM@Risk utilizes CM@Risk's Contingency funds, CM@Risk shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from CM@Risk's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If CM@Risk's contingency funds are used for a new line item that was not given with the original Schedule of Values, these shall be so indicated.

- 5.3.2** Owner's Contingency are funds to be used at the sole discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. Owner's Contingency shall be added to the GMP amount provided by CM@Risk, the sum of which shall be the full Contract Price for construction. At the time that Owner's Contingency is used the appropriate markups shall be applied.
- 5.4** **Open Book.** CM@Risk shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all Agreements between CM@Risk and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to assure the City has a complete and accurate understanding of all Project costs.

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## **Article 6 - Changes to the Contract Price and Time**

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### **6.0 Delays to the Work**

- 6.0.1** If CM@Risk is delayed in the performance of the Work that shall cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, or, those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.0.2** CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work within three (3) days of the occurrence of the delay. In the case of a continuing delay only one request is necessary.
- 6.0.3** By way of example, events that shall entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate Contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.0.4** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.
- 6.0.5** It is understood, however, that permitting CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.0.6** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God and shall not be adjusted absent a showing of actual damage.

## **6.1 Differing Site Conditions**

- 6.1.1** If CM@Risk encounters a Differing Site Condition, CM@Risk shall be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are actually adversely impacted by the Differing Site Condition.
- 6.1.2** Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **6.2 Errors, Discrepancies and Omissions**

- 6.2.1** If CM@Risk observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.
- 6.2.2** If CM@Risk proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CM@Risk does so at its own risk. Adjustments involving such circumstances made by CM@Risk prior to clarification by the Design Professional shall be at CM@Risk's risk.

## **6.3 The City Requested Change in Work**

- 6.3.1** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.3.2** Such alterations and changes shall not invalidate this Agreement nor release the surety and CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.
- 6.3.3** The City shall request a proposal for a change in Work from CM@Risk, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

- 6.4** **Legal Requirements.** The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of their Agreement or the date of the GMP, affecting the performance of the Work

## **6.5 Change Directives and Change Orders**

- 6.5.1** City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive if any adjustments are appropriate. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.
- 6.5.2** All changes in Work authorized by Change Directives and/or Change Orders shall be performed under the conditions of the Contract Documents.

## **6.6 Minor Changes in the Work**

- 6.6.1** The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. CM@Risk shall carry out such written orders promptly.

- 6.6.2** CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.
- 6.6.3** Minor changes in Work shall not involve an adjustment in the Contract Price and/or Contract Times.
- 6.7 Contract Price Adjustments**
- 6.7.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- 6.7.1.1** Unit prices set forth in this Agreement or as subsequently agreed to between the parties;
- 6.7.1.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and
- 6.7.1.3** Costs, fees and any other markups.
- 6.7.2** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit "B".
- 6.7.3** If an increase or decrease cannot be agreed to as set forth in Sections 6.7.1.1 through 6.7.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in their Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices shall cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.7.5** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.7.5.1** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.7.5.2** If the parties are unable to agree and City expects CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.7.6 Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

## **Article 7- Procedure for Payment**

- 7.0** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to the City's satisfaction, the City agrees to pay CM@Risk the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and CM@Risk's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement shall be made in accordance with payment provisions detailed below.
- 7.1 GMP Payment Request**
- 7.1.1** At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2** At least five (5) working days prior to the date established for a Payment Request, CM@Risk shall submit an updated Project Master Schedule and meet with the City's Representative to review the progress of the Work as it shall be reflected on the Payment Request.
- 7.1.3** The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that title to all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- 7.1.4** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.
- 7.1.4.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.1.4.2** For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Coconino County or other Sites as may be approved and be accessible for City's inspection. CM@Risk must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.
- 7.1.4.3** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.1.5** CM@Risk shall submit to City on a monthly basis either on the first of the month for payment on the 15<sup>th</sup> or on the 19th of the month for payment on the 30th or 31st. If the payment date is on a Saturday, payment shall be on Friday. If the payment date is on a Sunday, payment shall be on Monday.
- 7.2 Payment of GMP**
- 7.2.1** City shall make payment in accordance with A.R.S. §34-607. Payment shall be made no later than fourteen (14) days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

**7.2.2** City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Request, it shall notify CM@Risk in writing within (7) days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk shall take to rectify City's concerns. CM@Risk and City shall attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

### **7.3 Retention on GMP**

**7.3.1** City shall retain ten percent (10%) of each Payment Request amount provided. When fifty percent (50%) of the Work has been completed by CM@Risk, upon request of CM@Risk, City may reduce the amount retained to five percent (5%) from CM@Risk's subsequent Payment Requests if CM@Risk's performance of Work has been satisfactory.

**7.3.2** In lieu of retention, CM@Risk may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by the State of Arizona, securities of or guaranteed by the United States of America, securities of counties, municipalities and school districts within the State of Arizona or shares of savings and loan institutions authorized to transact business in Arizona.

**7.3.2.1** CDs assigned to the City must be maintained at the City's single servicing bank, currently Wells Fargo, in the form of time deposit receipt accounts.

**7.3.2.2** Securities deposited in lieu of retention must be deposited into a separate account with a bank within the State of Arizona.

**7.3.2.3** CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of Escrow Agreement. Escrow Agreement forms may be obtained from the Contracts Department by calling (928) 779-7685, extension 7318.

**7.4 Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one-half (2.5) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

### **7.5 Final Payment**

**7.5.1** After receipt of a final Payment Request, City shall make final payment within sixty (60) days after receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Completion Letter has been issued by the City.

**7.5.2** At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

**7.5.2.1** An affidavit affirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which shall in any way affect City's interests;

**7.5.2.2** A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

**7.5.2.3** Consent of CM@Risk's surety, if any, to final payment.

## **7.6 Payments To Subcontractors or Suppliers**

- 7.6.1** CM@Risk shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to CM@Risk. No agreement between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.
- 7.6.2** If CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:
- 7.6.2.1** To hold CM@Risk in default under this Agreement;
- 7.6.2.2** Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
- 7.6.2.3** Reject all future offers to perform work for the City from CM@Risk for a period not to exceed one (1) year from Substantial Completion date of this Project; or
- 7.6.2.4** Terminate this Agreement.
- 7.6.3** If CM@Risk's payment to a Subcontractor or supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02(D) and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.
- 7.6.4** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- 7.6.5** CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

## **7.7 Record Keeping and Finance Controls**

- 7.7.1** Records of CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three (3) years after Final Completion of the Project.
- 7.7.2** The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.
- 7.7.3** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of CM@Risk's records, the audit discloses CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 7.7.4** CM@Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.



- 7.7.5** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's Agreements, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

## **Article 8- Claims and Disputes**

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### **8.0 Requests for Agreement Adjustments and Relief.**

- 8.0.1** If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **8.1 Dispute Avoidance and Resolution**

- 8.1.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.1.2** CM@Risk and City shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.
- 8.1.3** If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.
- 8.1.4** If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

1. Mediator Selection. Unless the parties agree otherwise, the mediator(s) shall be selected from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the parties are unable to agree upon a mediator within 10 business days, each party shall independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the "Director") of three attorney mediators from that roster that are acceptable to the party, and further, inform the Director of any preference as to matters such as the candidate's mediation style, subject matter expertise, or other factors pertinent to the case. The Director shall then select an attorney mediator from the parties' lists or such other attorney mediator from the above noted roster, as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.
2. Fees and Costs. Each party agrees to bear its own fees and costs in mediation.
3. Subsequent or Contemporaneous Agreements. The parties shall include this provision in all subsequent or contemporaneous agreements relative to this matter, absent specific written agreement of the parties otherwise.
4. Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation.
5. Waiver. This Section shall not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

**8.1.5** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**8.2** **Duty to Continue Performance.** Unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

### **8.3 Representatives of the Parties**

#### **8.3.1 The City's Representatives**

**8.3.1.1** City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Name  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
(928) \_\_\_\_\_ (928) \_\_\_\_\_

- 8.3.1.2** City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Name  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
(928) \_\_\_\_\_ (928) \_\_\_\_\_

**8.3.2 CM@Risk's Representatives**

- 8.3.2.1** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

\_\_\_\_\_, Title  
\_\_\_\_\_, Address  
\_\_\_\_\_, City, State, Zip  
\_\_\_\_\_, Telephone

- 8.3.2.2** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

\_\_\_\_\_, Title  
\_\_\_\_\_, Address  
\_\_\_\_\_, City, State, Zip  
\_\_\_\_\_, Telephone

## **Article 9 – Suspension and Termination**

**9.0 City's Right to Stop Work**

- 9.0.1** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- 9.0.2** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

**9.1 Termination for Convenience**

- 9.1.1** Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination. CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2** If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, CM@Risk shall proceed with the following obligations.
- 9.1.3.1** Stop Work as specified in the notice.
- 9.1.3.2** Place no further subcontracts or orders.

- 9.1.3.3** Terminate all subcontracts to the extent they relate to the work terminated. CM@Risk shall ensure that all subcontracts contain this same termination for convenience provision set forth in Section 9.1 et seq.
- 9.1.3.4** At the City's sole discretion and if requested in writing by the City, assign to the City all right, title and interest of CM@Risk under the subcontracts subject to termination.
- 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of CM@Risk and in which the City has or may acquire an interest.
- 9.1.4** CM@Risk shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.
- 9.1.5** The City shall pay CM@Risk the following:
- 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
- 9.1.5.2** The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from CM@Risk's failure to perform as required under this Agreement.
- 9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that CM@Risk would have sustained a loss on the entire Work had they been completed, CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** CM@Risk shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.
- 9.2 The City's Right to Perform and Terminate for Cause**
- 9.2.1** If the City provides CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources at [CM@Risk's](#) sole expense.
- 9.2.2** If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@Risk's receipt of such notice.
- 9.2.3.1** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) day period.

- 9.2.3.2** If CM@Risk, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then City may declare this Agreement terminated for default by providing written notice to CM@Risk of such declaration.
- 9.2.4** Upon declaring this Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk hereby transfers, assigns and conveys to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, CM@Risk shall only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.6** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.
- 9.2.7** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

## **Article 10 - Insurance and Bonds**

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### **10.0 Insurance Requirements**

- 10.0.1** CM@Risk and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by CM@Risk, its agents, representatives, employees or Subcontractors.
- 10.0.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- 10.0.3** The City in no way warrants that the minimum limits contained herein are sufficient to protect CM@Risk from liabilities that might arise out of the performance of the work under this Agreement by CM@Risk, its agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

**10.1 Minimum Scope And Limits Of Insurance.** CM@Risk shall provide coverage with limits of liability not less than those stated below:

- 10.1.1** Commercial General Liability – Occurrence Form  
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.
- |   |                         |
|---|-------------------------|
| • General Aggregate/for this Project        | \$2,000,000/\$1,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000             |
| • Personal and Advertising Injury           | \$1,000,000             |
| • Each Occurrence                           | \$1,000,000             |

The policy shall be endorsed to include the following additional insured language: "**The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk**".

- 10.1.2** Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.  
Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: "**The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk, including automobiles owned, leased, hired or borrowed by CM@Risk**".

- 10.1.3** Worker's Compensation and Employers' Liability  
Workers' Compensation Statutory  
Employers' Liability  
Each Accident \$100,000  
Disease - Each Employee \$100,000  
Disease – Policy Limit \$500,000

- 10.1.4 Builders' Risk Insurance or Installation Floater** \$\_\_\_\_\_
- In an amount equal to the initial Contract Amount plus additional coverage equal to Contract Amount for all subsequent change orders.

- 10.1.4.1** The City of Flagstaff, CM@Risk, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the Work shall be **Named Insured's** on the policy.

- 10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement**.

- 10.1.4.3** Coverage shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

- 10.1.4.4** Coverage shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

- 10.1.4.5** CM@Risk shall provide coverage from the time any covered property becomes the responsibility of CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off Site.

- 10.1.4.6** Coverage shall contain a **waiver of subrogation** against the City of Flagstaff.

- 10.1.4.7** CM@Risk is responsible for the payment of all policy deductibles.

- 10.2 Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

- 10.2.1** The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by CM@Risk even if those limits of liability are in excess of those required by this Agreement.

- 10.2.2** CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect

to all other available sources.

- 10.2.3** Coverage provided by CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.2.4** The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed by the CM@Risk for the City.
- 10.3** **Notice Of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Contracts Division and shall be sent by certified mail, return receipt requested.
- 10.4** **Acceptability Of Insurers.** Insurance is to be placed with insurers who are duly licensed companies in the State of Arizona with an "A.M. Best" rating of A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect CM@Risk from potential insurer insolvency.
- 10.5** **Verification Of Coverage**
- 10.5.1** CM@Risk shall furnish the City with Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.5.2** All Certificates of Insurance and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
- 10.5.3** All Certificates of Insurance required by this Agreement shall be sent directly to City's Contracts Division. The City project/contract number and project description shall be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 10.5.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must:**
- **Submit a current Certificate of Insurance (dated within fifteen (15) days of the payment request submittal) with each payment request form. The payment request shall be rejected if the Certificate of Insurance is not submitted with the payment request.**
- 10.6** **Subcontractors.** CM@Risks' Certificate(s) of Insurance shall include all Subcontractors as additional insured's under its policies. All coverage's for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7** **Approval.** Any modification or variation from the insurance requirements in this Agreement shall be made by the City's Legal Department, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.
- 10.8** **Bonds and Other Performance Security.**
- 10.8.1** Prior to execution of this Agreement, CM@Risk shall provide a performance bond and a labor

and materials bond, each in an amount equal to the full amount of the GMP.

- 10.8.2** Each such bond shall be executed by a surety company, or companies, holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the City of Flagstaff.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in Arizona, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
  - 10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
  - 10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A-, 7, or better for the prior four quarters" by the A.M. Best Company.

## **Article 11 - Indemnification**

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### **11.1 CM@Risk's Liability and Indemnification.**

- 11.1.1** To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of CM@Risk, its employees, agents, or any tier of subcontractors in the performance of this Agreement. CM@Risk's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of CM@Risk or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services CM@Risk may be legally liable.

The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnity in this paragraph.

## **Article 12 – General Provisions**

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### **12.1 Contract Documents**

- 12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) dated \_\_\_\_\_ and used as the basis for the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Proposal, as accepted by the Mayor and Council per Council Minutes \_\_\_\_\_th day of \_\_\_\_\_



, 2007, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

- 12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- 12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
  - 12.1.3.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.
  - 12.1.3.2 Specifications take precedence over Plans.
  - 12.1.3.3 In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Agreement, the Contract Documents take precedence over the Design Phase Agreement
- 12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.5 The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.2 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3 **Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4 **Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5 **Cooperation and Further Documentation.** CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6 **Assignment.** Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.
- 12.7 **Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.8 **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents shall be for the sole and exclusive benefit of City and CM@Risk and not for the benefit of any other party.

- 12.9 Governing Law.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed, in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.
- 12.10 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.11 Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 12.13** It is not CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if CM@Risk recognizes that portions of the Construction Documents are at variance therewith, CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.14 Independent Contractor.** CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 The City's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
- 12.16 Survival.** All warranties, representations and indemnifications by CM@Risk shall survive the completion or termination of this Agreement.
- 12.17 Covenant Against Contingent Fees.** CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of City has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.18 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**12.19 Notice.**

**12.19.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

\_\_\_\_\_, Title  
\_\_\_\_\_, Address  
\_\_\_\_\_, City, State, Zip  
\_\_\_\_\_, Telephone

to City:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Rick Barrett, Division/Department Head  
Phone: (928) \_\_\_\_\_  
Fax: (928) \_\_\_\_\_

With a copy to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Christine Cameron, Project Manager  
Phone: (928) 226-4863  
Fax: (928) \_\_\_\_\_

Design Professional:

\_\_\_\_\_, Title  
\_\_\_\_\_, Address  
\_\_\_\_\_, City, State, Zip  
\_\_\_\_\_, Telephone

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

**12.19.2** Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed

delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

\_\_\_\_\_, Title  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone \_\_\_\_\_

to City:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Rick Compau, Purchasing Director  
Phone: (928) 779-7661  
Fax: (928) 779-7656

With copies to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn:  
Phone: (928)                      Ext.  
Fax: (928)

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn:  
Phone: (928)  
Fax: (928) \_\_\_\_\_

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

## **12.20 Equal Opportunity/Affirmative Action**

**12.20.1** CM@Risk shall comply with the provisions of this Agreement, including the requirements of Section 1-15-0010 of the City of Flagstaff Employee Handbook of Regulations pertaining to discrimination and accepting applications or hiring employees. CM@Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. CM@Risk shall take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. CM@Risk further agrees that this Subsection shall be incorporated in all subcontracts and job-consultant contracts under this Agreement entered into by CM@Risk.

- 12.20.2** The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of disadvantaged and/or minority-owned or woman-owned business to reflect both the industry and community ethnic composition.

The following two paragraphs apply to CM@Risk named herein and shall appear in all Agreements between CM@Risk and any and all Subcontractors who are employed on this Project. CM@Risk further agrees that the two paragraphs shall be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

Any Party (Subcontractor), in performing under this Agreement, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) shall take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship.

CM@Risk further agrees that the above two paragraphs shall be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

## **12.21 Confidentiality Of Plans & Specifications**

- 12.21.1** Any plans or specifications regarding this Project shall be for official use only. [CM@Risk](#) shall not share them with others except as required to fulfill the obligations of this Agreement with the City.

- 12.21.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by CM@Risk shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of \_\_\_\_\_ Agreement with the City of Flagstaff."

- 12.22 CM@Risk and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@Risk shall take such other measures, as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

- 12.22.1 Security Inquiries.** CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM@Risk for other work not involving the City. An employee rejected for work under this Agreement shall not be proposed to perform work under other City Agreements or engagements without City's prior approval.

- 12.22.2** Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the Project, and standards used by City in evaluating its own personnel.
- 12.22.3** Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.
- 12.22.4** Background and Security-Contracts and Subcontracts. CM@Risk shall include the security inquiry terms of this Section for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 12.22.5** Materiality of Security Inquiry Provisions. The security inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM@Risk may, at City's sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@Risk to liability for its breach of this Agreement.
- 12.23** **Hazardous Materials**
- 12.23.1** Unless included in the Work, if CM@Risk encounters material on the Site which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by applicable law, it shall immediately stop work and report the condition to the City.
- 12.23.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by applicable law, CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. CM@Risk and the City may agree, in writing, to continue work in non-affected areas on the Site.
- 12.23.3** An extension of Contract Time may be granted in accordance with Article 6.
- 12.23.4** CM@Risk shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 12.24** **Computer Systems.** CM@Risk shall warrant fault-free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault-free performance shall include the manipulation of data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of this Agreement.
- 12.25** **Traffic Control.** CM@Risk shall comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

THE CITY OF FLAGSTAFF, ARIZONA

Project Name

Project No. \_\_\_\_\_, Agreement No. \_\_\_\_\_

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

CM@Risk agrees that this Agreement, as awarded, is for the stated Work and understands that payment for the total Work shall be made on the basis of the indicated amount(s), per the terms and conditions of this Agreement.

Guaranteed Maximum Price

(Written Amount)

\$ \_\_\_\_\_

THE CITY OF FLAGSTAFF, ARIZONA

Name, Legal Entity

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
ATTEST: (Signature and Title)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## EXHIBIT A - PROJECT DESCRIPTION



## **EXHIBIT B – APPROVED GMP PROPOSAL**

**PROJECT #:**  
**PROJECT NAME:**

**DATE:**

## EXHIBIT C – TECHNICAL SPECIFICATIONS

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Heidi Holland, Library Director  
**Co-Submitter:** Michelle D'Andrea  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



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### TITLE:

**Consideration of Approval of the Intergovernmental Agreement:** between the Governing Board of the Coconino County Community College District and City of Flagstaff for the East Flagstaff Community Library building rental agreement renewal.

### RECOMMENDED ACTION:

Approve the lease agreement IGA renewal for the East Flagstaff Community Library.

### Policy Decision or Reason for Action:

The City of Flagstaff has had a lease agreement/IGA in place with the Coconino County Community College District for the East Flagstaff Community Library at the 3000 N Fourth Street location since 2002. This agreement has lapsed and is in need of renewal or reinstatement.

### Financial Impact:

The costs remain consistent with the initial agreement and continue to be covered by the existing East Flagstaff Community Library budget.

The annual amount of \$81,421 for Fiscal Year 2013, effective July 1, 2012 to June 30, 2013, paid in twelve equal monthly installments. Each July the monthly rent shall be increased by the amount of increase in the Consumer Price Index U.S. City Average All Urban Consumers as published by the United States Department of Labor's Bureau of Labor Statistics, over the base period index for the annual average of the prior year. Such increase shall be limited to not less than 0% and not more than 5% over the prior year.

### Connection to Council Goal:

Effective governance.

### Has There Been Previous Council Decision on This:

Yes - Council approval to enter into agreement with Coconino County Community College District for the East Flagstaff Community Library in September of 2002 and renewed and amended in 2008.

**Options and Alternatives:**

1. Approve Intergovernmental Agreement and the Lease Agreement will be renewed with no disruption of service to the eastside community.
2. Do not approve and a new location would need to be designated along with relocating, with additional costs accrued and disrupted services.

**Background/History:**

The eastside library has been a success in its community and seen an incredible amount of growth in usage over the last 10 years.

This library used to be located within the Mount Elden Middle School facility, with approximately 2,000 patrons visiting in a month.

Upon relocating to the current CC- owned location at 3000 N Fourth over 10 years ago, the visitor counts have gone up every year.

With its opening in the current location on March 16, 2003, the library saw not only an increase in patron usage but also an increase in requests for services, programming and resources. By July of 2003, the patron count had increased to 9,978. More recently, in July of 2012, the library welcomed 28,024 patrons for the month. For FY 2012, the annual visitor count was 339,931.

**Key Considerations:**

Library services in the eastside community are helping to address the digital divide. Examples:

- Many come into the library to use the computers and internet as they have no other access.
- Parents take advantage of library early literacy services, programs and information.
- Seniors among many other age groups utilize the computer help that is readily accessible.
- Teens and pre-teens come in after school to do homework, take part in programming and use computers.

**Expanded Financial Considerations:**

As part of the rental agreement, Coconino Community College provides utilities and snowplowing.

**Community Benefits and Considerations:**

The library has had some local neighborhood area volunteers of various age groups besides the many community members that come in everyday to study, learn more about computers, use the internet, meet friends or business partners, read newspapers and magazines and attend early literacy and life long learning programs. Survey input and the library receives many positive comments from the community it serves. Examples in the last quarter include the following:

- "I love my neighborhood branch library and that it is open so many hours."
- "Friendly, helpful staff! Job search, resume assistance, greatly appreciated!"
- "Your Flagstaff branch is very knowledgeable on information and services."
- "I love the library because there are fish and books and storytime."

**Community Involvement:**

Inform; Involve; Collaborate

The library has involved local neighborhood area volunteers of various age groups. Local community members use the library for job help and computer tutoring help. One local community member volunteered to collaborate in facilitating bilingual children's story time sessions with library staff. The library helps to inform our community at both locations on City and regional events and other requested information, local or otherwise.

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**Attachments:**    IGA Lease Renewal  
                         Original IGA  
                         '08 Amendment

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE GOVERNING BOARD OF THE COCONINO COUNTY COMMUNITY COLLEGE DISTRICT

AND

CITY OF FLAGSTAFF

WHEREAS, the City of Flagstaff (the "City") and the Coconino County Community College District (the "District") entered into an Intergovernmental Agreement dated September 10, 2002, which was amended on September 8, 2008 (the "Original Agreement") for the purpose of the District leasing property to the City for the East Flagstaff Library; and

WHEREAS, Section 8 of the Agreement indicated that: the term of the Original Agreement was ten years; it could be renewed on the same terms for an additional five years; and if neither party intended to renew, that party must provide 180 days' written notice of the intent not to renew. Neither Party provided such written notice. And, neither Party took action to renew the Original Agreement. The Original Agreement, therefore, lapsed on September 10, 2012; and

WHEREAS, the Parties now wish to enter into a new Agreement on the same terms and conditions as if the Parties timely renewed the Original Agreement, with the exception of a change to the calculation of the amount of rent.

THEREFORE, the Parties agree as follows:

1. The terms of the Original Agreement, which is hereby incorporated into this document and is attached as Attachment A, with the exceptions indicated in Paragraphs 2 and 3 below:

2. Section 8 of the Original Agreement is deleted in its entirety and replaced with the following:

The term of this Agreement shall commence on the date of the execution of the Original Agreement by the parties, and shall end on June 30, 2017 (the "Initial Term.") This Agreement will automatically renew for an additional two years, terminating on June 30, 2019, if neither party sends a written notice of intent to terminate to the other party at least 60 days prior to the expiration of the Initial Term. Either party may terminate this lease at any time for any reason or no reason, without penalty, upon 180 days written notice.

3. Section 9.1 of the Original Agreement is deleted in its entirety and replaced with the following:

In consideration of the rights and privileges granted by CCCC to the City by this Agreement, and in consideration for the costs incurred in 9.3 below, the parties agree that the City shall

pay rent to the CCC in the annual amount of \$81,421.46 for Fiscal Year 2013, effective July 1, 2012 to June 30, 2013, paid in twelve equal monthly installments. Each July the monthly rent shall be increased by the amount of increase in the Consumer Price Index U.S. City Average All Urban Consumers as published by the United States Department of Labor's Bureau of Labor Statistics, over the base period index for the annual average of the prior year. Such increase shall be limited to not less than 0% and not more than 5% over the prior year. If the term commences on a date other than the first day of a calendar month or ends on a date other than the last day of the month, monthly rent shall be prorated. Rent is due on the first of each month. If payment is not received by the 20<sup>th</sup> of the month, such delay shall constitute a breach of this Original Agreement.


4. The Parties waive all claims or defenses that may be available to either of them as a result of the lapse of the Original Agreement and agree to proceed as if the Original Agreement did not lapse.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF FLAGSTAFF

COCONINO COUNTY COMMUNITY COLLEGE DISTRICT

BY: \_\_\_\_\_  
Gerald W. Nabours, Mayor

BY:  \_\_\_\_\_  
Leah L. Bornstein, President

Attest:  
  
\_\_\_\_\_  
Elizabeth Burke, City Clerk

Attest:  
  
 \_\_\_\_\_  
Executive Assistant

Approved as to form:  
  
\_\_\_\_\_  
City Attorney

Approved as to form:  
  
\_\_\_\_\_  
Attorney for the Coconino County  
Community College District

## INTERGOVERNMENTAL AGREEMENT

Between  
**The Governing Board of the Coconino County Community College District**  
and  
**City of Flagstaff**

This Intergovernmental Agreement, dated as of \_\_\_\_\_, 2002 (the "Agreement"), by and between the Governing Board of the Coconino County Community College District ("CCCC"), an entity duly formed and existing under Title 15 of the Arizona Revised Statutes, with offices at 2800 S. Lone Tree Road, Flagstaff, Arizona, and the City of Flagstaff, a municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona acting on behalf of the Flagstaff Public Library ("City").

### RECITALS

A. Pursuant to the Arizona Revised Statutes Title 15, CCCC may enter into lease agreements as a lessor.

B. City has agreed to undertake the planning, financing and remodeling of a portion of a building on the campus of the Coconino County Community College ("CCCC") at the location as described in Exhibit A (the "Premises"), and CCCC has found and determined that the lease of the Premises to the City for such purposes is not inconsistent with the functions of CCCC.

C. CCCC and the City wish to work together to coordinate access to regional telecommunications facilities to avoid redundancies.

NOW, THEREFORE, pursuant to Arizona Revised Statutes Section 11-952, authorizing agreements between public agencies for services or the joint exercise of powers common to each, the parties agree as follows:

#### 1. Representations and Warranties of the City.

The City makes the following representations and warranties to CCCC as of the date of the execution of this Agreement:

1.1 City has full legal right, power, and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement, and by appropriate action, has duly authorized the execution and delivery of this Agreement.



1.2 The officers of the City executing this Agreement are duly and fully authorized to execute the Agreement.

## **2. Representations and Warranties of CCCC.**

CCCC makes the following representations and warranties to the City as of the date of the execution of this Agreement.

2.1 CCCC has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement, and by proper action has duly authorized the execution and delivery of this Agreement.

2.2 The officers of CCCC executing this Agreement are fully and properly holding their respective offices and are fully authorized to execute this Agreement.

2.3 The Agreement has been duly authorized, executed and delivered by CCCC, and will constitute a legal, valid and binding agreement of CCCC, enforceable against CCCC in accordance with its terms.

2.4 CCCC is the owner of the improvements and the owner of a ground lease interest in the Premises which extends until August 4, 2024.

2.5 The execution and delivery of this Agreement, and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any indenture, mortgage, deed of trust, agreement, lease, contract or other agreement or instrument to which CCCC is a party or by which it or its properties are otherwise subject or bound, or, to the knowledge of CCCC, any applicable law or administrative rule or regulation, or any applicable court order, administrative decree or order, or result in the creation or imposition of any prohibitive lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of CCCC, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties, or operations of the City.

2.6 No consent of approval of any trustee or holder of any indebtedness of CCCC, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

2.7 No information, exhibit or report furnished to the City by CCCC in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state a

material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**3. Premises.**

CCCC hereby leases to the City and the City hereby rents from CCCC, on the terms and conditions set forth in this Agreement, a portion of the building and parking lot situated on the campus of the College on Fourth Street, Flagstaff, Arizona, and more particularly described in the attached Exhibit "A" (the "Premises") for the purpose of operating a public library. The Premises shall include forty-five (45) parking spaces for the use of City library patrons and staff to the west of the building depicted in Exhibit A. If 45 spaces are not available in that area, CCCC will make spaces available in the vicinity of the Premises to the south of the building. CCCC hereby further irrevocably grants to the City and the City hereby accepts from CCCC, a license for ingress and egress to the Premises for the term of this Agreement.

**4. Possession.**

CCCC covenants to deliver possession of the Premises to the City upon commencement of the term of this Agreement as set forth in Section 8.

**5. Condition of Premises.**

CCCC leases the Premises to the City in "as is" condition.

**6. Quiet Enjoyment.**

CCCC covenants that, subject to the limitations expressly set forth herein, the City, upon performing all covenants in this Agreement, may quietly have, hold, and enjoy all of the Premises during the term of this Agreement and any extended term hereof, without hindrance or interruption by CCCC, its sublessees or assigns. CCCC agrees that it shall not use the portion of the building adjoining the Premises for any use or purpose that is extra hazardous on account of fire or otherwise, or for any use or purpose that is unlawful, that is a nuisance or that would conflict with the City's ability to operate a public library on the Premises.

**7. Purpose; Cooperation.**

7.1 The Premises shall be used by the City during the term of the Agreement for the purpose of operating a branch of the Flagstaff/Coconino County Public Library ("Library") for the benefit of the community and for the benefit of CCCC.

7.2 The Library Director for the City and CCCC's Coordinator for Information Resources and Library Services, or their respective designees, agree to meet annually between the months of January and March. Items to be reviewed annually shall include, but not be limited to, hours of operation, services, and resources. Any amendment of the terms of this Agreement must be in writing as provided elsewhere in this Agreement.

7.3 CCCC and the City will endeavor to use joint purchasing agreements when such agreements will maximize access for both City and CCCC patrons to the Premises and the services provided through this Agreement.

## **8. Term.**

The term of this Agreement shall commence on the date of execution of this Agreement by the parties, and shall end ten years from that date unless such term is extended or sooner terminated as provided in this agreement. City and CCCC may renew this Agreement on the same terms for an additional five (5) years. If either party does not intend to renew the agreement at the end of the lease term, that party will give 180 days' written notice of such intention to the other party prior to the end of the lease term.

## **9. Rent and Fees.**

9.1 In consideration of the rights and privileges granted by CCCC to the City by this Agreement, and in consideration for the costs incurred in 9.3 below, the parties agree that the City shall pay rent to the CCCC in the amount of Sixty Thousand Dollars (\$60,000) per year, paid in twelve equal monthly installments of Five Thousand Dollars (\$5,000). If the term commences on a date other than the first day of a calendar month or ends on a date other than the last day of the month, monthly rental shall be prorated. Rent is due on the first of each month. If payment is not received by the 20<sup>th</sup> of the month, such delay shall constitute breach of this Agreement. City shall not be obligated to make rental payments until it has received a certificate of occupancy for the Premises.

9.1.1 Each July the monthly rental shall be increased by the amount of increase in the Consumer Price Index – U.S. City Average – All Urban Consumers (1982-84 = 100), as published by the United States Department of Labor's Bureau of Labor Statistics, over the base period index for the annual average of the prior year. Such increase shall be limited to not less than 0% and not more than 5% over the prior year.

9.2 Common Areas, Parking, and Maintenance. During the Term, City and City's employees, agents, visitors, and invitees shall have the right, in common with others entitled to the similar use thereof, to use all of the interior and exterior common areas of the Premises, including, without limitation, lobbies, hallways, doorways for ingress and egress to and from the Premises and to and from the exterior common areas of the Premises, parking areas located on the property on which the Premises is situated not exclusively reserved for use by the College or by third parties, streets, service drives, and sidewalks for ingress and egress to and from the Premises and public streets and highways. CCCC may adopt, from time to time, reasonable rules and regulations regarding the common areas, including parking.

9.3 CCCC shall maintain the interior and exterior areas of the Premises and common areas in good order and condition including parking lot, landscaping, foundation, roof, fire sprinkler, electrical, heating, ventilation, air-conditioning, and plumbing systems.

9.3.1 CCCC's obligations shall include providing landscaping, snow removal, and other services for the exterior common areas. With regard to the interior of the Premises, CCCC will provide cleaning and janitorial services, as described in RFP 98-4 "Request for Janitorial Services," attached as Exhibit B.

9.3.2 CCCC schedules routine maintenance, and may from time to time make reasonable modifications to the maintenance schedule. The City shall make written requests to address non-scheduled maintenance items. CCCC shall have a reasonable time to respond and correct these non-scheduled maintenance items. CCCC will respond promptly to the City's requests which involve emergency repairs.

9.4 Utilities. Utility expenses related to the Premises, including without limitation electric, water, gas, sewer, refuse and recycling expenses, are the sole responsibility of CCCC and are included in the amount to be paid by the City to CCCC in paragraph 9.1. Communication utilities, including telephone and cable services, are the sole responsibility of the City.

9.4.1 During the period of the City's remodeling of the Premises, and before the City obtains an occupancy permit, the City shall pay CCCC \$1,250.00 per month for electrical, gas and water expenses. If the City's occupancy under its occupancy permit commences on a date other than the first day of a calendar month, these monthly expenses shall be prorated.

## **10. Responsibility for Construction of Project.**

10.1 City shall arrange for the design and remodeling of the structure on the Premises to be used for the Library, in substantial accordance with the contract documentation approved (or to be approved) by CCCC and consistent with the requirements of CCCC. Any substantial change in the approved plans shall be submitted to CCCC's designee for review and approval.

10.2 The City shall obtain at its expense all licenses and permits required to perform the work and shall comply with all applicable laws affecting the work. All work and materials shall be in accordance with all applicable codes and regulations. The City shall ensure that the Premises are maintained in a safe condition and that only those involved in supervising and performing the construction work shall be permitted access to the Premises.

## **11. Title on Termination.**

The City shall, upon the termination or expiration of this Agreement, quit and surrender the Premises and deliver to CCCC actual possession of the Premises in good order, condition, and repair. City shall have the right to remove from the Premises all fixtures used or procured for use in connection with its possession of the Premises, and paid for by the City, on or before expiration or termination of the Agreement, provided that City shall promptly repair, or cause to be repaired, any damage resulting to the Premises by reason of this removal.

**12. Default.**

In the event that either party shall be in default in the performance of any obligation on its part to be performed under the terms of this Agreement, which default continues for thirty (30) days following written notice and demand for correction to the defaulting party, the non-defaulting party may exercise any and all remedies granted by law.

**13. Right of Entry.**

CCCC, through any of its duly authorized representatives, shall have the right to enter upon the Premises for the purposes of inspection, or any other lawful purpose, including, without being limited to, the right to enter to inspect construction work during the course of construction for compliance with the provisions of this Agreement. CCCC shall exercise such rights reasonably during ordinary business hours, and in such manner as not to interfere with the business of the City or its contractors.

**14. Signs.**

The City shall not construct, hang or paint any signs on the exterior of buildings other than safety or directional signs and signs provided for in the approved plans, without written consent of CCCC.

**15. Waste.**

The City shall not knowingly commit, suffer or permit any waste or nuisance on the Premises or any acts to be done on the Premises in violation of any applicable laws or ordinances. The City shall keep and maintain the interior of the Premises in a safe condition.

**16. Taxes and Assessments.**

CCCC shall pay all lawful taxes, assessments, or charges which at any time may be levied upon any interest CCCC may have under this Agreement (including both the land and improvements).

**17. Assignment: Sublease.**

CCCC may, at any time assign, transfer, or otherwise convey all or any part of its right, title and interest in the Premises or this Agreement, including CCCC's rights to receive the rental payments or any part thereof, in which event City agrees to make all rental payments to the assignee designated by CCCC.

17.1 The City may not sublet the Premises or assign this Agreement, or any interest therein, without the prior consent in writing of CCCC, which consent may not be unreasonably withheld by CCCC.



**18. Relationship of Parties.**

The City and the agents and employees of the City in the performance of this Agreement shall act in an independent capacity and not as officers, employees, or agents of CCCC. The employees of CCCC who participate in the performance of this Agreement are not agents of the City.

**19. Encumbrance of Leasehold.**

With the exception of this Agreement, CCCC shall not encumber the leasehold. The City shall not have the right to subject this Agreement to any mortgage nor subject this Agreement to any trust deed or other security device.

**20. Amendments.**

This Agreement may not be amended, changed, modified, or altered without the prior written consent of the parties.

**21. Waiver.**

The waiver by any party of a breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**22. No Liability of City.**

22.1 Any obligation of CCCC created by or arising out of this Agreement shall not impose a debt or pecuniary liability upon the City or a charge upon the general credit or taxing powers of City but shall be payable solely out of funds duly authorized and appropriated by CCCC.

22.2 The delivery of this Agreement shall not directly, indirectly, or contingently obligate City to levy any form of taxation or to make any appropriation. No breach of any pledge, obligation or agreement made or incurred in connection with this Agreement may impose any pecuniary liability upon, or any charge upon the general credit of the City.

**23. Indemnification and Insurance.**

23.1 Indemnification. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

23.2 Insurance. The City shall provide commercial general liability insurance coverage insuring against liability for acts, errors and omissions of the City, its Council members, officers, employees, agents and patrons for claims made by any person or entity, including CCCC, whether for death, personal injury, property damage or otherwise. The limit of the City's coverage is \$26,000,000 which, for purposes of this Agreement, shall be primary to the insurance or self-insurance coverage of CCCC, and shall name CCCC together with their respective Board members, officers, employees and agents, as additional insured parties. The City shall be solely responsible for insuring the value of its fixtures, additions, improvements and contents of the Premises against loss by fire, theft, or any other cause.

#### **24. Dispute Resolution.**

24.1 If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration (if required under A.R.S. § 12-1518), to litigation, or to some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation.

24.1.1 The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

24.2. Except as otherwise agreed by the parties or required by law, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

#### **25. Section Headings.**

All articles, paragraph and section headings, titles or captions contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**26. Notices.**

All notices herein which are to be given or which may be given by either party to the other, shall be in writing and shall be deemed to have been given three (3) business days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows:

**CCCC:**

Jami Bradley, Vice President of  
Business and Administrative Services  
Coconino County Community College  
2800 S. Lone Tree  
Flagstaff, AZ 86001

**City:**

Jeri Dustir, Deputy City Manager  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

Nothing in this Agreement shall preclude the giving of any such written notice by personal service, in which event notice shall be deemed given when actually received. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as provided above.

**28. Successors and Assigns.**

The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties.

**29. Holding Over.**

Should the City hold over the expiration of the term of this Agreement with the express or implied consent of CCCC, such holding over shall be deemed to be on a month-to-month basis, subject otherwise to all the terms and conditions of this Agreement.

**30. Conflict of Interest.**

This Agreement may be canceled pursuant to the provisions of A.R.S. § 38-511.

**31. Partial Invalidity.**

If any one or more of the terms, provisions, covenants or conditions of this Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants or conditions of this Agreement shall be affected, and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**32. Integration.** This Agreement represents the entire understanding of City and CCCC as to those matters contained in the Agreement. No prior oral or written understanding shall be of any



force or effect with respect to those matters covered in the Agreement. This Agreement may not be modified or altered except in a writing signed by duly authorized representatives of the parties, in compliance with all applicable statutory and charter requirements.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the 10<sup>th</sup> day of September, 2002.

**City of Flagstaff**

By: Joseph C. Donaldson  
Joseph C. Donaldson, Mayor  
Attest:

**Coconino County Community College District**

By: Thomas S. Jordan  
Thomas S. Jordan, President  
Attest:

Margie Brown  
Margie Brown, City Clerk

Lydia Adams  
Lydia Adams, Board Recorder

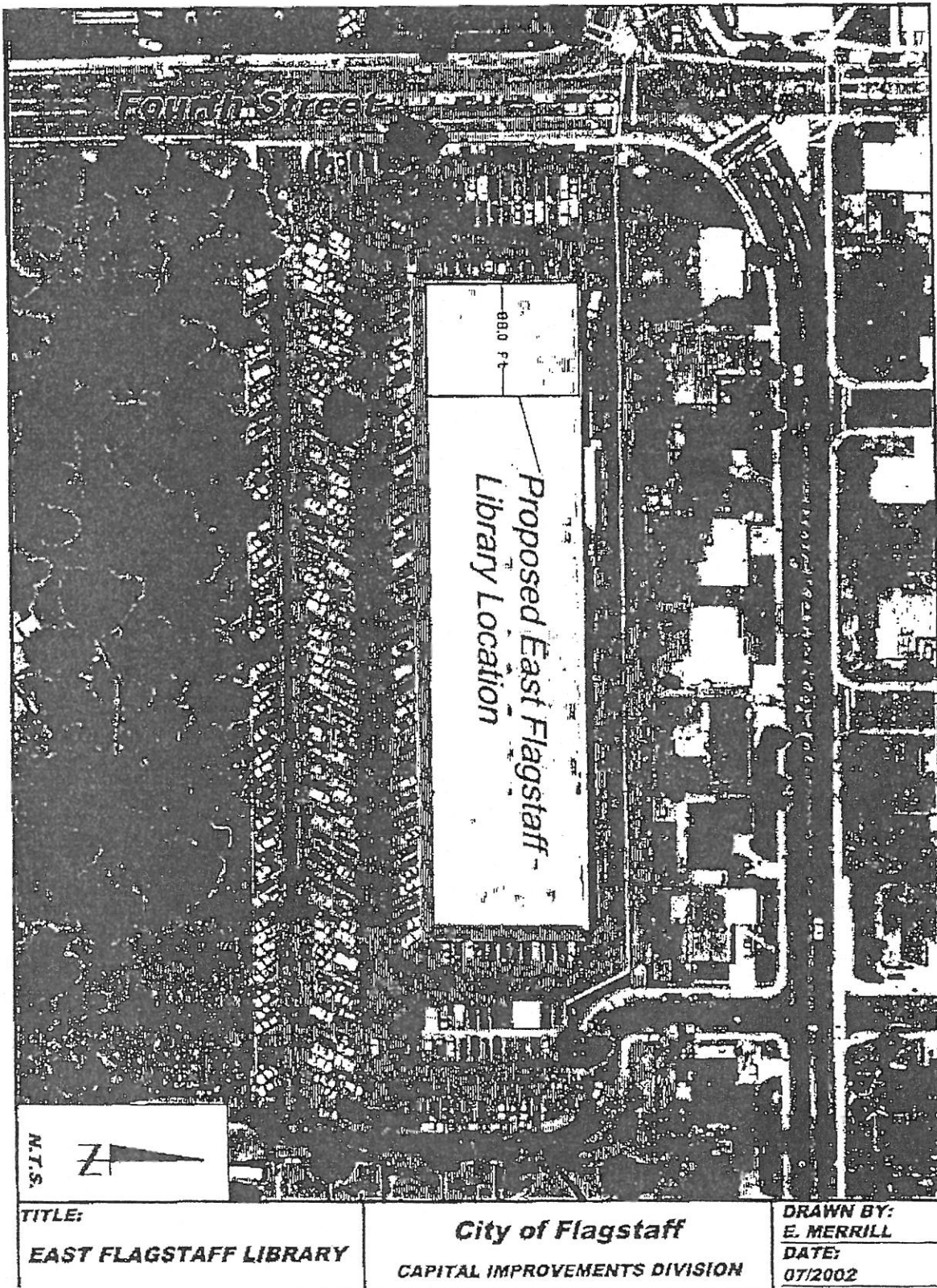
Approved as to form:

Joseph R. Bertoldo  
Joseph R. Bertoldo, City Attorney

Approved as to form:

A. Dean Pickett  
A. Dean Pickett, Attorney for  
Coconino County Community College District

EXHIBIT A



# **Coconino Community College**

**RFP 98-4**

**"Request for Janitorial Services"**

## **Appendix B**

**"Specifications and  
Contractor's  
Responsibility"**

## 1.0 GENERAL CLEANING & TECHNICAL SPECIFICATIONS

The following are the general cleaning technical specifications for the community college facilities noted within. Please use these as a guide for preparation of the proposal and the cleaning services required.

- 1.0.1 Traffic areas of carpets are to be cleaned four (4) times a year. All areas of carpet are to be cleaned once per year. Extraction will be performed as directed by the community college.
- 1.0.2 All Janitorial Services are to be performed between 9:00 p.m. and 6:00 a.m., unless noted by site.
- 1.0.3 Report needed building repairs to the business office daily.
- 1.0.4 Janitors will be responsible, to respond to all emergency cleanups, spills, and porter services as requested during all hours they are on duty.
- 1.0.5 All tile floors are to be stripped and waxed twice yearly, or as needed to maintain appearance as determined by Facilities Management.
- 1.0.6 The intent of this contract is to cover all janitorial services to maintain each site. All sites may not require all technical requirements, but the omission of a requirement (space, surface, etc.) does not relieve vendor from the requirement to perform services needed.

## 1.1 SPACE TECHNICAL REQUIREMENTS: Administrative Offices, Public Areas and Conference/Multiple Purpose Rooms.

### 1.1.1 DAILY:

- 1.1.1.1 Empty all waste receptacles and pencil sharpeners. Damp wipe receptacles and replace plastic liners as needed.
- 1.1.1.2 ~~Spot clean glass in doors, partitions, windows, and displays.~~
- 1.1.1.3 Dust mop smooth floors and spot mop.
- 1.1.1.4 ~~Spot clean soiled areas of carpeted floors.~~
- 1.1.1.5 ~~Vacuum all carpeted traffic and open areas in classrooms.~~
- 1.1.1.6 Clean and sanitize all drinking fountains.

### 1.1.2 WEEKLY:

- 1.1.2.1 Spray buff floors that are coated with floor finish, and dust mop after.
- 1.1.2.2 Vacuum all fabric upholstery, spot clean all washable coverings.
- 1.1.2.3 Mop areas which have concrete, tile, terrazzo, or resilient tile floors.
- 1.1.2.4 Clean metal trim.
- 1.1.2.5 Spot clean doors, walls, and cubical partitions. Spot clean kick boards, and base boards as needed in high traffic areas.

1.1 (Continued)

1.1.2.6 Vacuum entire carpet areas, move furniture as needed, but replace to original settings.

1.1.2.7 Dust and remove marks from cleared areas of furniture tops, vacant shelves, sills, ledges, and clean public telephones.

1.1.3 MONTHLY:

1.1.3.1 Dust vertical furniture surfaces, ~~baseboards~~ vents, and vertical wall trims.

1.2 SPACE TECHNICAL REQUIREMENTS: Corridors, Lobbies, Patio Areas, Entryways, and Handicap Ramps.

1.2.1 DAILY: As often as required to maintain clean appearance.

OUTSIDE ENTRYWAYS ONLY

1.2.1.1 Remove lint, cobwebs, mud and litter from walks steps, walkways, floors, canopies and lights.

1.2.1.2 Empty smoking and trash receptacles and wipe down. (including trash receptacles in public and staff parking lots.)

1.2.1.3 Clean walk-off mats.

1.2.1.4 Clean entry door and adjacent glass.

1.2.1.5 Sweep or blow off walks and entries as needed.

DAILY:

ALL 5.2 AREAS

1.2.1.6 Empty all waste receptacles. Damp wipe receptacles and replace plastic liners as needed.

1.2.1.7 Clean, sanitize, and polish all drinking fountains.

1.2.1.8 Empty and clean all ash trays located in smoking areas.

1.2.1.9 Vacuum, all floor mats, or entry mats located at entry and exit doors. Wash as needed.

1.2.1.10 Spot clean glass at entry/exit doors. Clean all push plates and kick plates.

1.2.1.11 Damp wipe soiled table tops, chairs and benches, and remove any loose trash from areas, (patios, stairs).

1.2.1.12 Sweep and remove loose soil and rocks from all entry ways and handicap ramps.

1.2.1.13 Clean all handicap ramps and rails.

1.2.1.14 Clean public telephones

1.3.2 WEEKLY: ALL 5.2 AREAS

1.3.2.1 Dust horizontal surfaces such as window sills, ledges, and cleared furniture tops, chairs, and benches.

1.3 (Continued)

1.3.2.2 Spray buff waxed floors and dust mop afterwards.

1.4 SPACE TECHNICAL REQUIREMENTS: Employee Break Rooms and Lounges.

1.4.1 DAILY:

1.4.1.1 Empty all waste receptacles. Damp wipe receptacles and replace plastic liners as needed.

1.4.1.2 Spot clean walls and doors.

1.4.1.3 Clean sinks, counter tops, tables, and exterior surfaces of appliances.

1.4.1.4 Spot mop all smooth floors.

1.4.1.5 Vacuum all carpeted areas.

1.4.2 WEEKLY:

1.4.2.1 Spray-buff floors, removing scuff marks and or dull areas. Dust mop afterwards.

1.4.2.2 Wet mop floors.

1.4.3 MONTHLY:

1.4.3.1 Vacuum all fabric upholstery; clean all washable coverings.

1.4.3.2 Dust furniture, sills, ledges, and HVAC vents.

1.5 SPACE TECHNICAL REQUIREMENTS: Rest Rooms, Showers, and Locker Rooms.

1.5.1 DAILY:

1.5.1.1 Empty all waste receptacles. Damp wipe receptacles and replace plastic liners as needed.

1.5.1.2 Resupply towels, soap, toilet paper, and seat covers as required.

1.5.1.3 Clean mirrors, sink basin and fixtures, using a germicidal solution or detergent.

1.5.1.4 Remove stains, heavy soil, or graffiti on walls, and partitions.

1.5.1.5 Clean toilet seats and outside toilets using a germicidal detergent solution. Clean inside of bowl rims and urinals using a cleaner having max. of 14% HCL acid.

1.5.1.6 Clean all stainless steel and chrome surfaces.

1.5.1.7 Remove trash from floors, and damp mop using a germicidal detergent or solution.

1.5.2 WEEKLY:

1.5.2.1 Wash waste containers and urns using a germicidal or detergent solution.

1.6 (Continued)

1.6.2.2 Clean hardware underneath basins using a germicidal or detergent solution.

1.6.2.3 Pour one gallon of water in floor drains.

1.6.2.4 Spray-buff waxed resilient floors. Dust mop afterwards.

1.6.3 MONTHLY:

1.6.3.1 Dust all HVAC vents.

1.7 SPACE TECHNICAL REQUIREMENTS: Janitorial Closets and Storage Rooms.

1.7.1 DAILY:

1.7.1.1 Clean the custodial sink.

1.7.1.2 Rinse clean mop buckets, and mops and put in their respective place.

1.7.1.3 Make sure all containers of cleaning materials are properly labeled as per OSHA requirements.

1.7.1.4 Report needed building repairs to Facilities Manager.

1.7.1.5 Make certain that no waste materials are left in the room.

1.7.1.6 Clean all custodial equipment and tools and keep stored in orderly fashion.

1.7.1.7 Put materials on shelves in orderly fashion and do not store oily rags on these shelves. Give all cloth materials adequate ventilation for drying.

1.7.1.8 Do not leave garbage cans full in closets overnight.

1.7.2 WEEKLY:

5.5.2.1 Spot clean walls and doors, and dust shelves and ledges.

1.7.3 MONTHLY:

1.7.3.1 Sweep and damp mop floor to remove heavy soil.

1.7.3.2 Dust all HVAC vents.

1.8 SPACE TECHNICAL REQUIREMENTS: Outside Refuse Areas.

1.8.1 The immediate area around the refuse container (approximate ten foot circle) will be polished and all loose debris will be removed.

1.8.2 Trash removed from all areas is to be emptied into outside refuse container daily.

2.0 CONTRACTOR'S RESPONSIBILITIES:

2.0.1 The Contractor shall furnish all necessary labor, tools, equipment and supplies to perform the required services at the designated locations. (See Exhibit 1 for Supply Specifications).



After recording, return to:

Clerk's Office  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

## Amendment One

### INTERGOVERNMENTAL AGREEMENT

Between  
**The Governing Board of the Coconino County Community College District**  
and  
**City of Flagstaff**

This Amendment One is incorporated into and made a part of the Intergovernmental Agreement, dated September 10, 2002 (the "Agreement") made by and between the Governing Board of the Coconino County Community College District ("CCCC"), and the City of Flagstaff, acting on behalf of the Flagstaff Public Library ("City"), by mutual agreement of the parties as set forth below.

1. The text in Section 9.1 of the Agreement shall be revised as follows:

9.1 In consideration of the rights and privileges granted by CCCC to the City by this Agreement, and in consideration for the costs incurred in 9.3 below, the parties agree that the City shall pay rent to the CCCC as described in Schedule 1 attached to Amendment 1 of this Agreement in the amount of Sixty Thousand Dollars (\$60,000) per year, paid in twelve equal monthly installments of Five Thousand Dollars (\$5,000). Schedule 1 will be updated as of July 1 each year for budgeted amounts and then adjusted for actual cost differences from the prior fiscal year, should there be a difference from budget. Adjustments will be applied prospectively to the rent. If the term commences on a date other than the first day of a calendar month or ends on a date other than the last day of the month, monthly rental shall be prorated. Rent is due on the first of each month. If payment is not received by the 20th of the month, such delay shall constitute breach of this Agreement. City shall not be obligated to make rental payments until it has received a certificate of occupancy for the Premises.

~~9.1.1 Each July the monthly rental shall be increased by the amount of increase in the Consumer Price Index - U.S. City Average - All Urban Consumers (1982-84=100), as published by the United States Department of Labor's Bureau of Labor Statistics, over the base period index for the annual average of the prior year. Such increase shall be limited to not less than 0% and not more than 5% over the prior year.~~



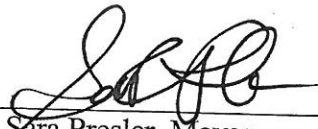
2. The text in Section 9.3.1 of the Agreement shall be revised as follows:

9.3.1 CCCC's obligations shall include providing landscaping, snow removal, and other services for the exterior common areas. ~~With regard to the interior of the Premises, CCCC will provide cleaning and janitorial services, as described in RFP 98-4 "Request for Janitorial Services," attached as Exhibit B.~~

Except as modified by this Amendment One, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed by duly authorized representative of the parties as of the 8<sup>th</sup> day of September, 2008.

**City of Flagstaff**



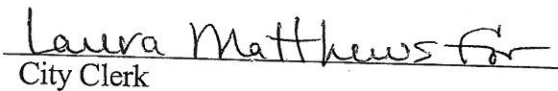
Sara Presler, Mayor

**Coconino County Community  
College District**



Leah L. Bornstein, President

Attest:



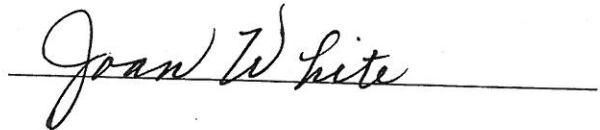
City Clerk

Approved as to form and as to authority  
granted by law:



City Attorney

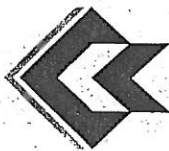
Attest:



Approved as to form and as to authority  
granted by law:



Attorney for Coconino County Community  
College District



# Coconino Community College

LONE TREE CAMPUS 2800 S LONE TREE RD FLAGSTAFF AZ 86001-2701

August 26, 2008

Ms. Amelia Mason  
Library Administration Specialist  
East Flagstaff Library  
3000 N. Fourth Street, Ste. #5  
Flagstaff, AZ 86004

Regarding: Updated Tenant Rental Letter

Dear Ms. Mason,

The IGA for the library lease between the City of Flagstaff and Coconino Community College specifies the rental rate for fiscal year 2008-2009 will be \$77,853.89 per year or \$6,487.82 per month. In addition to rent, the rental tax rate of 1.721% was effective as of July 1, 2008. The total monthly rental rate is calculated as follows:

FY2009 Rental Rate/month	\$	6,487.82
Rental Tax @ 1.721%	+	111.66
Total Rent (effective 7/1/08)	=	<u>\$ 6,599.48</u>

You may remit your payment to:

Coconino Community College  
Attn: Accounts Receivable  
2800 S. Lone Tree Road  
Flagstaff, AZ 86001

I appreciate your prompt attention to this matter.

Sincerely,

Cindy Cook  
Controller

cc: Accounts Receivable,  
Jami Van Ess, Vice President, Business and Administrative Services

FLAGSTAFF

GRAND CANYON

PAGE

WILLIAMS

**BUSINESS &  
ADMINISTRATIVE  
SERVICES**

VICE PRESIDENT

ACCOUNTING

BUDGET

FACILITIES

HUMAN RESOURCES

INFORMATION  
TECHNOLOGY SYSTEMS

PURCHASING

AUXILIARY SERVICES

# SCHEDULE 1

## Coconino Community College Library Rental at Fourth Street Campus 5/15/2008 14:54

<u>Locat.</u>	<u>Org.</u>	<u>Description</u>	<u>Library %</u>	<u>Budget</u>	<u>Library</u>
		Library Rental Charge			\$ 77,853.89
		Expenses:			
(1)		District Budget Allocation			28,477.67
(2)		Fourth Street Budget Allocation			46,023.67
		Subtotal Expenses			74,501.33
		Indirect Expenses at 4.5%			3,352.56
		Total Expenses			77,853.89
		Expenses over Revenues			-

(1)		<b>District Budget Allocation - Insurance and Labor</b>			
0000DS	1535	Property Ins (not incl Umbrella)	4.62%	\$ 64,092.08	
0000FL	1540	Security - labor (net of revenues)	4.62%	134,387.40	
0000DS	1601	Facilities - labor	4.62%	153,863.85	
0000FL	1604	Maintenance - labor	4.62%	263,828.25	
				616,171.58	
					4.62%
					28,477.67

(2)		<b>Fourth Street Budget Allocation - Materials, Ground Lease, Deferred Maintenance, Custodial &amp; Utilities</b>			
0000FS	1540	Security - materials	16.39%	2,201.68	
		Op & Grounds - includes ground			
0000FS	1602	lease & property taxes	16.39%	66,035.84	
0000FS	1604	Maintenance - materials	16.39%	21,840.00	
Plant		Deferred Maintenance Spreadsheet	16.39%	76,412.00	
				166,489.52	
					16.39%
					27,290.41
0000FS	1603	Custodial - Per invoice			
0000FS	1605	Utilities - Per meter			18,733.26
					46,023.67

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Barbara Goodrich, Management Services  
Director  
**Date:** 05/15/2013  
**Meeting** 05/21/2013  
**Date:**



---

**TITLE:**

**Consideration and Adoption of Ordinance No. 2013-10:** An ordinance of the City Council of the City of Flagstaff approving the form and authorizing the execution and delivery of an Equipment Lease/Purchase Agreement for Renewable Energy Equipment; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance; and authorizing clerical corrections.

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2013 -10 by title only for the final time
- 2) City Clerk reads Ordinance No. 2013-10 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2013-10

**Policy Decision or Reason for Action:**

To provide authorization to enter into a fifteen year capital lease for solar photovoltaic equipment to be placed at the Aquaplex, Rio de Flag, and the Wildcat Wastewater plant.

**Financial Impact:**

All costs related to the solar projects will be financed. Banc of America Public Capital Corporation has been awarded this financing at a rate of 2.88% for fifteen years with no lump-sum payout at the end of the period.

**Connection to Council Goal:**

Effective governance

**Has There Been Previous Council Decision on This:**

Yes.

May 7, 2013: Read Ordinance 2013-10 for first time

April 2, 2013: Capital financing award to Banc of America Public Capital

March 15, 2010: Solar system installation award to Ameresco

**Options and Alternatives:**

1. Approve the financing to be completed by the Management Services Director. Recommended.
2. Approve the financing, but direct other staff to manage the process. Impact: May slow the process to bring other staff up to speed.
3. Do not approve the financing. Impact: The proposed rate would expire and a higher rate may result. The incentives would have to returned to Arizona Public Service.

**Background/History:**

In November 2009, staff was directed to develop renewable energy systems on City properties. In March 2010, a solar installation contract was awarded to Ameresco (formerly APS Energy Services). Phase 1 and 2 installed three (3) solar systems to date totaling 862 kilowatts (kw). Phase 3 initially proposed four (4) additional sites including the Airport, Aquaplex, Rio de Flag Wastewater Treatment Facility, and Wildcat Wastewater Treatment Facility totaling 927 kw, however the Airport project has been withdrawn due to length of time it would take to complete the Environmental Assessment. This revises the project size to 802 kw.

The City received incentives from the Arizona Public Service Schools and Government and Performance Based Incentive Programs ranging between \$0.06 - \$0.12 per kw hour of renewable energy generation. This initiative supports the City's commitment to achieve the goals set forth in Resolution 2010-16 (Increased Energy Efficiencies and Renewable Energy Production and Purchase).

The City has awarded the contract for the lease purchase of this project to Banc of America Public Capital. This action completes the needed authorization through an ordinance for the execution and delivery of the lease purchase agreement.

**Key Considerations:**

The interest rate as offered by Banc of America is only valid until May 28, 2013. If the financing is not culminated by that time, the City will either have to renegotiate a rate with Banc of America or reissue the capital lease financing RFP. In addition, the APS incentives expire October 2013 and the construction needs to be complete at that time. Future APS renewable energy incentives are unavailable for an indeterminate amount of time.

**Expanded Financial Considerations:**

Approving the financing for these projects will not increase overall City costs. Rather, this will be paid from the projected savings per site after allowing for the additional operational, maintenance, insurance, and interest costs. The lease term is 15 years and the equipment is anticipated to have a minimum 15 year life. It is between years sixteen (16) and twenty (20) that will generate the greatest return to the City.

**Community Benefits and Considerations:**

The Flagstaff community will benefit from the City utilizing a safe, reliable and long-term affordable energy source. Additionally the City can increase awareness of renewable energy technologies by implementing projects that include educational components.

**Community Involvement:**

Inform

**Expanded Options and Alternatives:**

1. Approve the financing to be completed by the Management Services Director. Recommended.
2. Approve the financing, but direct other staff to manage the process. Impact: May slow the process to bring other staff up to speed.
3. Do not approve the financing. Impact: The proposed rate would expire and a higher rate may result. The incentives would have to returned to Arizona Public Service.

---

**Attachments:**     Ord. 2013-10  
                         Agreement.Clean  
                         Agreement.MarkedUp

**ORDINANCE NO. 2013-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT FOR RENEWABLE ENERGY EQUIPMENT; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AND AUTHORIZING CLERICAL CORRECTIONS**

WHEREAS, the Mayor and Council of City of Flagstaff, Arizona (the “City”), have determined to lease-purchase certain renewable energy equipment constituting personal property used by the City to perform essential government functions (the “Renewable Energy Equipment”); and

WHEREAS, in order to lease-purchase the Renewable Energy Equipment, the Mayor and Council of the City (the “Council”) have decided to enter into an Equipment Lease/Purchase Agreement (Acquisition Fund - Arizona) (the “Agreement”) with Banc of America Public Capital Corp (or one of its affiliates) (the “Lessor”) and an Acquisition Fund and Account Control Agreement (the “Acquisition Fund Agreement”) with the Lessor and the “Acquisition Fund Custodian” therein identified; and

WHEREAS, there have been presented to the Council at the meeting at which this Ordinance is being adopted the proposed form of the Agreement and the Acquisition Fund Agreement (together, the “Agreements”); and

WHEREAS, no source of funds will be pledged by the City to make the lease payments pursuant to the Agreement, and such lease payments will be funded through an annual appropriation of legally available moneys at the discretion of the Council each year for inclusion in the annual budget of the City; and

WHEREAS, the Renewable Energy Equipment is composed of items which are utilities for purposes of Amendment No. 2 of the Charter of the City; and

WHEREAS, all acts, conditions and items required by the Constitution of the State of Arizona and the City to happen, exist and be performed precedent to and as a condition to the adoption of this Ordinance and the execution and delivery of the Agreements have happened, exist and have been performed in the time and manner required;

**ENACTMENTS:****BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

Section 1. The form, terms and provisions of the Agreements, in substantially the forms of such documents (including the exhibits thereto) presented at the meeting of the Council at which this Ordinance is being adopted are approved, the execution of each such document being conclusive evidence of such approval, and the Mayor of the City or any other member of the Council and the Clerk of the City, where applicable, are authorized and directed, for and on behalf of the City, to execute and deliver and attest or approve the Agreement and to take all action to carry out and comply with the terms of such documents.

Section 2. The Management Services Director of the City is authorized to determine on behalf of the City the date the Agreement is to be sold; the total aggregate principal amount of the Agreement which is to be executed and delivered but not to exceed in total the aggregate principal amount of \$4,000,000; the date the Agreement is to be dated; the date on which interest on the Agreement is to be payable and the interest rates per annum the Agreement is to bear (but not in excess of that rate provided in the "Summary of Terms and Conditions" provided by the Lessor in the letter from the Lessor to the City, dated March 15, 2013); the date the Agreement is to mature but not later than twenty (20) years from the date of the execution and delivery of the Agreement, the principal amount to mature on such date and the provisions for repayment thereof in advance of such date and the terms upon which the Agreement is to be sold (including determinations of price and original issue discount and premium).

Section 3. The Mayor, the Manager and the Management Services Director and other officers of the City, on behalf of the City, are authorized and directed, without further order of the Mayor and Council of the City, to do all such acts and things and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered on behalf of the City (including agreements for the sale or placement of the Agreement and disposition of the proceeds of such sale or placement) and to evidence compliance with, or further the purposes of, all the terms and conditions of this Ordinance and the consummation of the transactions contemplated by, and as may be necessary to carry out the terms and intent of, this Ordinance.

Section 4. All actions of the officers and agents of the City which conform to the purposes and intent of this Ordinance and which further the sale and execution and delivery of the Agreement as contemplated by this Ordinance, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 5. If any section, paragraph, clause or phrase of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Ordinance. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.



Section 6. The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary, and to make formatting changes needed for purposes of clarity, form, or consistency.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff, Arizona, this 21st day of May, 2013.

.....  
Mayor

ATTEST:

.....  
City Clerk

APPROVED AS TO FORM:

.....  
City Attorney

CERTIFICATION

I hereby certify that the foregoing Ordinance No. .... was duly passed and adopted by the Mayor and Council of the City of Flagstaff, Arizona, at a regular meeting held on the 21st day of May, 2013, and the vote was ..... ayes and ..... nays.

.....  
City Clerk

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ACQUISITION FUND – ARIZONA)**

This Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (as further hereinafter defined, this “*Agreement*”) dated as of May \_\_, 2013, and entered into between Banc of America Public Capital Corp, a Kansas corporation (as further hereinafter defined, the “*Lessor*”), and the City of Flagstaff, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires to lease and acquire from Lessor certain Renewable Energy Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State of Arizona to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I**

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$\_\_\_\_\_. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Renewable Energy Equipment and to pay a portion of the Delivery Costs.

“*Acquisition Fund*” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

“*Acquisition Fund Agreement*” means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which the Acquisition Fund is established and administered.

“*Acquisition Fund Custodian*” means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_.

*“Agreement”* means this Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04 hereof.

*“Code”* means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

*“Commencement Date”* means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

*“Contract Rate”* means the rate identified as such in the Payment Schedule.

*“Delivery Costs”* means the costs incurred in connection with the execution and delivery of the Agreement, including counsel fees, fees and expenses of the Acquisition Fund Custodian and similar costs, fees and expenses.

*“Determination of Taxability”* means and shall be deemed to have occurred on the first to occur of the following: (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the holder thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the holder thereof; or (c) receipt by Lessor or Lessee of a written opinion of Bond Counsel that the interest component of any Rental Payment has become includable in the gross income of the holder thereof for federal income tax purposes.

*“Equipment Acceptance”* means, with respect to each portion of the Renewable Energy Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Renewable Energy Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement.

*“Equipment Costs”* means the total cost of the Renewable Energy Equipment, including related costs such as freight, installation and taxes and capitalizable costs incurred in connection with the acquisition, installation and/or financing of the Renewable Energy Equipment.

*“Equipment Schedule”* means the equipment schedule attached hereto as Exhibit A and made a part hereof.

*“Event of Default”* means an Event of Default described in Section 12.01 hereof.

*“Event of Taxability”* means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includable for federal income tax

purposes in a holder's gross income as a consequence of any act, omission or event whatsoever, as determined by a Determination of Taxability.

*"Lease Term"* means the Original Term and all Renewal Terms, with a final Renewal Term ending on October \_\_, 2028.

*"Lessor"* means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the right, title and interest of Lessor in and to the Renewable Energy Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01 hereof, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

*"Material Adverse Change"* means any change in Lessee's creditworthiness that could have a material adverse effect on (a) the financial condition or operations of Lessee, or (b) Lessee's ability to perform its obligations under this Agreement.

*"Original Term"* means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

*"Payment Schedule"* means the payment schedule attached hereto as Exhibit B and made a part hereof.

*"Rebates"* means, collectively, all incentives, rebates or credits available with respect to the Renewable Energy Equipment, and any additional incentives, rebates or credits that Lessee or Vendor may be entitled to as a result of the Renewable Energy Equipment.

*"Renewable Energy Equipment"* means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V hereof. Whenever reference is made in this Agreement to Renewable Energy Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Renewable Energy Equipment.

*"Renewal Terms"* means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

*"Rental Payments"* means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01 hereof, consisting of a principal component and an interest component.

*"State"* means the State of Arizona.

*"Taxable Date"* means the date on which the interest component of any Rental Payment is first includable in gross income of any holder thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Termination Value*” means the amount provided in the Payment Schedule.

“*2009 Capital Projects Financing Agreements*” means, collectively, (a) that certain Ground Lease dated as of July 1, 2009, as amended and supplemented, between the City of Flagstaff, Arizona, as lessor, and Wells Fargo Bank, N.A., as trustee, as lessee; (b) that certain Lease-Purchase Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, as lessor, and the City of Flagstaff, Arizona, as lessee; (c) that certain Trust Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, and the City of Flagstaff, Arizona and (d) other agreements and documents related to the foregoing, all with respect to the financing of certain Projects (as therein described and defined) on all or a portion of the real estate on which Renewable Energy Equipment is to be located.

“*Vendor*” means the manufacturer, installer or supplier of the Renewable Energy Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a municipal corporation duly incorporated and validly existing under the constitution and the laws of the State, with full power and authority to enter into this Agreement and the Acquisition Fund Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Acquisition Fund Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a municipal corporation.

(e) Lessee has complied materially with such public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Renewable Energy Equipment.

(f) During the Lease Term, the Renewable Energy Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Renewable Energy Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor, or provide written notice to Lessor that the same are available at an internal website: (i) annual audited financial statements (including, so long as required by such generally accepted accounting principles and practices (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal. The financial statements described in subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Renewable Energy Equipment and expects to make immediate use of the Renewable Energy Equipment. Lessee's need for the Renewable Energy Equipment is not temporary and Lessee does not expect the need for any item of the Renewable Energy Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Renewable Energy Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Renewable Energy Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may materially adversely affect Lessee's financial condition or impair its ability to perform its obligations under this Agreement or the Acquisition Fund Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Renewable Energy Equipment and the Acquisition Fund and Lessor's rights, interests and benefits under this Agreement and the Acquisition Fund Agreement.

(k) Lessee is the fee owner of the real estate where the Renewable Energy Equipment is and will be located and has good and marketable title thereto, and other than to the extent of the rights and interests created under the 2009 Capital Projects Financing Agreements, there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate (other than (i) liens for general ad valorem taxes and assessments, (ii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, and (iii) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record, in each case described in (i) through (iii), which will not, in the reasonable opinion of the Lessee, subject such real estate or any part thereof, to loss or forfeiture or materially impair the use of the real estate for its intended purposes).

(l) During the past ten (10) years, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No material event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) Lessee hereby acknowledges that the Lessor is relying on Lessee's procurement of (i) the energy savings guarantee from Ameresco and (ii) the Rebates as a material inducement for its execution and delivery of this Agreement. Lessee acknowledges that it must acquire and install the Renewable Energy Equipment by certain dates and comply with certain conditions relating to the Rebates in order obtain the Rebates. Lessee hereby agrees to use its best efforts to fulfill all requirements and meet all deadlines in order to obtain all such Rebates.

(n) Lessee hereby covenants and agrees to cooperate in all respects with Lessor in facilitating the prompt and careful removal and return of the Renewable Energy Equipment to Lessor from the real estate where the Renewable Energy Equipment is and will be located if at any time Lessor is entitled to have the Renewable Energy Equipment returned or delivered or it or entitled to repossession of the Renewable Energy Equipment pursuant to Section 3.03 or Section 12.02 hereof.



### ARTICLE III

*Section 3.01. Lease of Renewable Energy Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Renewable Energy Equipment and pay certain of the Delivery Costs. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Renewable Energy Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term and to pay the Rental Payments under the Lease through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments from its general fund and from any other funds legally available for the purpose as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Renewable Energy Equipment and peaceably remove and deliver at Lessee's expense the Renewable Energy Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Conditions to Lessor's Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund

Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the City Clerk or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) Opinions of counsel to Lessee, which taken as a whole, are substantially in the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

(vii) A copy of a fully completed and executed Form 8038-G and a fully completed and executed Arbitrage Certificate with respect to the Agreement;

(viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided, however*, that no "Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 hereof have been delivered to Lessor;

(ix) A copy of each completed and executed application that Lessee is required to file, and has filed, in order to obtain the Rebates with respect to the Renewable Energy Equipment and evidence of such Rebates;

(x) A copy of the fully executed Master Solar Agreement dated as of \_\_\_\_\_, 2013 between Ameresco Southwest, Inc. f/k/a APS Energy Services Company, Inc. ("*Ameresco*") and the Lessee including an energy savings guarantee from Ameresco with respect to the Renewable Energy Equipment; and

(xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund as provided in the Acquisition Fund Agreement.

## ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03 hereof, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03 hereof, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation by reason of any failure of the Renewable Energy Equipment to perform in the manner or to the extent that the Lessee anticipated from and after its acceptance or any failure to achieve cost or other savings that the Lessee anticipated, any other failure of the Renewable Energy Equipment, any defects, malfunctions, breakdowns or infirmities in the Renewable Energy Equipment, any disputes with the Vendor of any Renewable Energy Equipment or Lessor, any failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any Rebate or any payment for guaranteed energy savings by Vendor under the Vendor Agreement, any failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Renewable Energy Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.* (a) Lessee will not make or direct the making of any investment or other use of the proceeds of this Agreement which would cause this Agreement to be an "arbitrage bond" as that term is defined in section 148 (or any successor provision thereto) of the Code or a "private activity bond" as that term is defined in section 141 (or any successor provision thereto) of the Code, and Lessee will comply with the requirements of the Code sections and related Regulations throughout the Lease Term. (Particularly, Lessee shall be the owner of the Equipment for federal income tax purposes. Lessee shall not enter into any management or service contract with any entity other than a governmental entity for the

operation of any portion of the Equipment unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Equipment.) Also, the payment of the Rental Payments shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of this Agreement, or amounts treated as proceeds of this Agreement, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which this Agreement is being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury.

(b)(i) Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to comply with the requirements hereunder in order to ensure that the interest component of Rental Payments is excluded from gross income for federal income tax purposes under the Code; *provided, however*, compliance with any such requirement shall not be required in the event Lessee and Lessor receive an opinion of Bond Counsel signed by an attorney or firm of attorneys of national recognized standing in the field of law relating to municipal bonds selected by Lessee and reasonably acceptable to the Lessor that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of the interest component of Rental Payments, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event Lessee and Lessor receive such opinion, this Agreement shall be amended to conform to the requirements set forth in such opinion. (In consideration of the execution and delivery of this Agreement by Lessor and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, Lessee covenants, and the appropriate officials of Lessee are hereby directed, to take all action required or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion from gross income of the interest component of Rental Payments.)

(ii) In addition to Section 4.06 hereof, if for any reason any requirement hereunder is not complied with, Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence, and Lessee shall pay any required interest or penalty under Regulations section 1.148-3(h) with respect to the Code.

(c) Lessee shall comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of this Agreement (initially those specified in the Arbitrage Certificate delivered simultaneously herewith) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of the interest component of Rental Payments. Such experts and consultants shall be employed, as necessary, to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code, particularly those specified in the Arbitrage Certificate delivered simultaneously with the original issuance of this Agreement.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the Taxable Date, and Lessee will pay such additional amount as will result in the holder thereof receiving the interest component of Rental Payments (from and after the Taxable Date) at the Taxable Rate.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## ARTICLE V

*Section 5.01. Delivery, Installation and Acceptance of Renewable Energy Equipment.* (a) Lessee shall order the Renewable Energy Equipment, cause the Renewable Energy Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all Equipment Costs and other costs in connection therewith. When the Renewable Energy Equipment has been delivered and installed, Lessee shall promptly accept such Renewable Energy Equipment and evidence said acceptance by executing and delivering to Lessor an "Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) relating to each item of Renewable Energy Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Renewable Energy Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Renewable Energy Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Renewable Energy Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Renewable Energy Equipment is located for the purpose of inspecting the Renewable Energy Equipment.

*Section 5.04. Use and Maintenance of the Renewable Energy Equipment.* Lessee shall not install, use, operate or maintain the Renewable Energy Equipment (or cause the Renewable Energy Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall obtain and provide all permits and licenses, if any, necessary for the installation and

operation of the Renewable Energy Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Renewable Energy Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Renewable Energy Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Renewable Energy Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Renewable Energy Equipment as eligible for manufacturer's maintenance upon the return of the Renewable Energy Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Renewable Energy Equipment or install any accessory, equipment or device on an item of Renewable Energy Equipment if that would impair any applicable warranty, the originally intended function or the value of that Renewable Energy Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Renewable Energy Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Renewable Energy Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Renewable Energy Equipment shall be vested in Lessee immediately upon its acceptance of each item of Renewable Energy Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Renewable Energy Equipment from and against all claims, liens and legal processes of its creditors, and keep all Renewable Energy Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Renewable Energy Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Renewable Energy Equipment to Lessor in accordance with Section 12.02 hereof. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor's security interest or other interest in the Renewable Energy Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Renewable Energy Equipment. During the Lease Term, Lessor will not claim ownership of the Renewable Energy Equipment for the purposes of any tax credits, benefits or deductions with respect to the Renewable Energy Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Renewable Energy Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Renewable Energy Equipment, the Acquisition Fund and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code of the State and treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Renewable Energy Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Renewable Energy Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Renewable Energy Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Renewable Energy Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Renewable Energy Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Renewable Energy Equipment will be used for a governmental or proprietary purpose of Lessee and that the Renewable Energy Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Renewable Energy Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Renewable Energy Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Renewable Energy Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Renewable Energy Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Termination Value of the Renewable Energy Equipment or (ii) the replacement cost of the Renewable Energy Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided that*, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Renewable Energy Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Renewable Energy Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Renewable Energy Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Renewable Energy Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Renewable Energy Equipment, a payment and performance bond ("Surety Bond")



executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Renewable Energy Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, installation, construction, maintenance and/or servicing of the Renewable Energy Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Renewable Energy Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Renewable Energy Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Renewable Energy Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE VIII**

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Renewable Energy Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Renewable Energy Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Renewable Energy Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Renewable Energy Equipment (the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “Renewable Energy Equipment” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to equipment in accordance with Section 10.01(b) hereof.

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01 hereof, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Termination Value for the Renewable Energy Equipment, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Renewable Energy Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after paying the applicable Termination Value for such Renewable Energy Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## **ARTICLE IX**

*Section 9.01. Disclaimer of Warranties.* Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Renewable Energy Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee’s acquisition of the Renewable Energy Equipment shall be on an “as is” basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising

out of this Agreement, the Renewable Energy Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02. Indemnification.* To the fullest extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless Lessor, its directors, officers, shareholders, employees, agents and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, installation, construction, or use of the Equipment. Notwithstanding the foregoing, Lessor shall not be indemnified for any liability solely and directly resulting from the gross negligence or willful misconduct of Lessor.

*Section 9.03. Vendor's Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Renewable Energy Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Renewable Energy Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Renewable Energy Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay or satisfy all its obligations hereunder, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* all other amounts then owing hereunder *plus* the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Renewable Energy Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Termination Value (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (x) the Termination Value relating to the Rental Payment immediately prior to the date of such prepayment *plus* (y) accrued interest on the aggregate unpaid principal portion of Rental Payments immediately prior to the date of such prepayment) *plus* (iii) all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's security interests in and to such Renewable Energy Equipment will be terminated and Lessee will own the Renewable Energy Equipment free and clear of Lessor's security interest in the Renewable Energy Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Renewable Energy Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right

Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Renewable Energy Equipment and all rights in, to and under this Agreement related to such Renewable Energy Equipment, and all of Lessor's security interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit G attached hereto within five (5) business days after its receipt of such request.

***Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Renewable Energy Equipment or the Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.***

## ARTICLE XII

***Section 12.01. Events of Default Defined.*** Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided that*, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit (i) that is provided by Lessor or any affiliate of Lessor or (ii) under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000.00, in each case under which Lessee is an obligor, and such default remains uncured following the applicable cure period, if any, and either (1) arises from a failure to pay any amounts due with respect to such

agreement for borrowing money, lease financing of property or provision of credit and/or (3) causes or permits amounts to become immediately due and payable in full as a result of such default;

(e) A moratorium, debt restructuring (other than a refinancing or refunding), debt adjustment (other than a refinancing or refunding) or comparable restriction is imposed on or declared with respect to any obligations of the Lessee or Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding;

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days; or

(g) Any default occurs under any of the 2009 Capital Projects Financing Agreements and remains uncured following any applicable cure period, if any.

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Renewable Energy Equipment is located and retake possession of such Renewable Energy Equipment or require Lessee at Lessee's expense to promptly return any or all of such Renewable Energy Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Renewable Energy Equipment or, for the account of Lessee, sublease such Renewable Energy Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Renewable Energy Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of

taking possession, storing, reconditioning and selling or leasing such Renewable Energy Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 hereof. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Renewable Energy Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Renewable Energy Equipment or the Acquisition Fund.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

### **ARTICLE XIII**

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.02. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.06. Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State.

*Section 13.07. Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*Section 13.08. Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Lessor certifies that it does not have scrutinized business operations in either Iran or the Sudan.

*Section 13.09. Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Lessor or a consultant to Lessor with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Lessor unless the notice specifies a later time.

*Section 13.10. Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Lessor warrants Lessor's compliance with all Federal and State immigration laws and regulations that relate to Lessor's employees, as well as subcontractors of Lessor of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Lessor and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

*[SIGNATURE PAGE FOLLOWS]*



IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:  
City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Counterpart No. \_\_\_\_\_ of **3** manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

## LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Payment Schedule
Exhibit C-1	—	Form of Authorizing Ordinance
Exhibit C-2	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Counsel Form
Exhibit E	—	Form of Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	Form of Notice and Acknowledgement of Assignment
Exhibit H	—	Form of Acquisition Fund and Account Control Agreement

## **EXHIBIT A**

### **EQUIPMENT SCHEDULE**

Location of Equipment: [To be provided by Lessee]

Equipment Description (Scope of Work): [To be provided Lessee]

**EXHIBIT B**

**PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Termination Value  (including prepayment premium, if applicable)

*Contract Rate.* The Contract Rate is \_\_\_\_% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01(a) of the Agreement, the Prepayment Purchase Option Commencement Date is \_\_\_\_\_.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-1

### FORM OF AUTHORIZING ORDINANCE

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT (ACQUISITION FUND – ARIZONA) WITH RESPECT TO THE ACQUISITION, INSTALLATION, PURCHASE, FINANCING AND LEASING OF CERTAIN RENEWABLE ENERGY EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Flagstaff (the “*Lessee*”), a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain Renewable Energy Equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Renewable Energy Equipment*”); and

WHEREAS, in order to acquire such Renewable Energy Equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates) (the “*Lessor*”) and that certain Acquisition Fund and Account Control Agreement (the “*Acquisition Fund Agreement*”) among the Lessee, the Lessor and the Acquisition Fund Custodian therein identified, and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement (collectively, the “*Financing Agreements*”) and the documentation relate to the financing of the Renewable Energy Equipment for the purchase, acquisition and leasing of the Renewable Energy Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the governing body of the Lessee as follows:

*Section 1. Approval of Financing Agreements* The form, terms and provisions of the Agreement and the Acquisition Fund Agreement are hereby approved in substantially the forms

presented at this meeting, with such insertions, omissions and changes as shall be approved by the [City Manager] of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the [City Manager] of the Lessee is hereby authorized and directed to execute, and the [City Manager] of the Lessee is hereby authorized and directed to attest and countersign, the Agreement (including any related Exhibits attached thereto) and the Acquisition Fund Agreement and to deliver the Agreement (including such Exhibits) and the Acquisition Fund Agreement to the respective parties thereto, and the [City Manager] of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Financing Agreements to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with either of the Financing Agreements.

*Section 3. No General Liability.* Nothing contained in this Ordinance, either Financing Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, either Financing Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Acquisition Fund Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and the Acquisition Fund Agreement.

*Section 5. Severability.* If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

*Section 6. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 7. Effective Date.* This Ordinance shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_ day of \_\_\_\_\_.

CITY OF FLAGSTAFF, ARIZONA,  
as lessee

[SEAL]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-2

### FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Flagstaff, Arizona ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Acquisition Fund and Account Control Agreement dated as of May \_\_, 2013 among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
Kevin Burke	City Manager	_____
Barbara Goodrich	Management Services Director	_____
Jerry Nabours	Mayor	_____

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Clerk

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)



## EXHIBIT D

### FORM OF OPINION OF COUNSEL TO LESSEE (to be typed on letterhead of counsel)

[Closing Date]

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Flagstaff, Arizona (“*Lessee*”), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May \_\_, 2013, and Exhibits thereto by and between Banc of America Public Capital Corp (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Renewable Energy Equipment*”) and an executed counterpart of a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, dated May \_\_, 2013 (the “*Acquisition Fund Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the “*Transaction Documents*.”

Based on the foregoing, I am of the following opinions:

1. Lessee a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, and [has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Lessee has the requisite power and authority to lease and acquire the Renewable Energy Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Renewable Energy Equipment, the Acquisition Fund or other collateral thereunder.

**[6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of Arizona personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.]**

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

**EXHIBIT E**

**FORM OF ACCEPTANCE CERTIFICATE**

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Renewable Energy Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Renewable Energy Equipment for all purposes.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: \_\_\_\_\_

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

## EXHIBIT F

### FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May \_\_, 2013 (the “*Agreement*”) between Banc of America Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as Lessee

In connection with the above-referenced Agreement, the City of Flagstaff, Arizona (the “*Lessee*”), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Renewable Energy Equipment. The dollar amount limit for property damage to the Renewable Energy Equipment under such self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for property damage to the Renewable Energy Equipment which policy has a dollar limit for property damage to the Renewable Energy Equipment under such policy of \$\_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment. The dollar limit for such liability claims under the Lessee’s self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment in the amount of \$\_\_\_\_\_.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee’s self-insurance liabilities is \$\_\_\_\_\_. [Amounts paid from the Lessee’s self-insurance fund are subject to a dollar per claim of \$\_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: \_\_\_\_\_. Amounts payable for claims from the such sources are limited as follows: \_\_\_\_\_.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT G

### FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED \_\_\_\_\_

BANC OF AMERICA PUBLIC CAPITAL CORP (“Assignor”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“Assignee”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “Agreement”) dated as of \_\_\_\_\_, between Assignor and the City of Flagstaff, Arizona (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Renewable Energy Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated May \_\_, 2013 (the “Acquisition Fund Agreement”) by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the “Assigned Property”).

1. Pursuant to the authority of Ordinance \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Renewable Energy Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “Acknowledgement”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$_____
Total Amount of Rents Remaining	–	\$_____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____

Funds Remaining in Acquisition Fund      –      \$\_\_\_\_\_

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNOR:  
BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT H

### FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this “*Agreement*”), dated as of May \_\_, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as “*Lessor*”), the City of Flagstaff, Arizona, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (hereinafter referred to as “*Lessee*”) and Deutsche Bank Trust Company Americas (hereinafter referred to as “*Acquisition Fund Custodian*”).

Reference is made to that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 between Lessor and Lessee (hereinafter referred to as the “*Lease*”), covering the acquisition, installation and lease of certain Renewable Energy Equipment described therein (the “*Renewable Energy Equipment*”). It is a requirement of the Lease that the Acquisition Amount (\$\_\_\_\_\_) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the acquisition and installation of and payment for the Renewable Energy Equipment and payment of a portion of the Delivery Costs.

The parties agree as follows:

1. *Creation of Acquisition Fund.*

(a) There is hereby created a special trust fund to be known as the “City of Flagstaff, Arizona Renewable Energy Equipment Acquisition Fund” (the “*Acquisition Fund*”) to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Agreement, “Qualified Investments” means any investment permitted in accordance with Arizona Revised Statutes Section 35-323; *provided, however*, that each such investment shall be insured at all times by United States federal deposit insurance and the investment shall never be placed in an off-shore account.



(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition and installation of the Renewable Energy Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof and in accordance with Section 4.07 of the Lease.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

## 2. *Acquisition of Property.*

(a) *Acquisition Contracts.* Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition and installation of the Renewable Energy Equipment, with moneys available in the Acquisition Fund. Lessee represents that the estimated costs of the Renewable Energy Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition, installation or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Renewable Energy Equipment, and the operation and maintenance thereof.

(b) *Authorized Acquisition Fund Disbursements.* Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Renewable Energy Equipment and a portion of the Delivery Costs.

(c) *Requisition Procedure.* No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund for the payment of Delivery Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 2, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due, and that: (i) an obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid and attached thereto is the original invoice with respect to such obligation, (ii) the Renewable Energy Equipment is insured in accordance with the Lease, (iii) no event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date thereof, (iv) the disbursement shall occur prior to \_\_\_\_\_, 2013, (v) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof. Prior to disbursement from the Acquisition Fund for payment of Equipment Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and certifying the date of Equipment Acceptance for the portion of Renewable Energy Equipment for which disbursement is requested. Each such requisition shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) Equipment Acceptance has occurred as of the date identified therein with respect to the portion of Renewable Energy Equipment for which disbursement is requested; (ii) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof) and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment; (iii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iv) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (v) the Renewable Energy Equipment is insured in accordance with the Lease; (vi) no event of nonappropriation or Event of Default (nor any event which, with notice or lapse of time or both, would become an event of nonappropriation or an Event of Default) has occurred and is continuing; (vii) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease; and (viii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Acquisition Fund to pay Equipment Costs relating to a portion of the Renewable Energy Equipment prior to the date on which Lessee has certified to Acquisition Fund Custodian in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Renewable Energy Equipment for which funds are requested for disbursement from the Acquisition Fund.

3. *Deposit to Acquisition Fund.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Renewable Energy Equipment in excess of amounts available therefor in the Acquisition Fund and to pay Delivery Costs in excess of amounts available therefor in the Acquisition Fund.

4. *Excessive Acquisition Fund.* Any funds remaining in the Acquisition Fund on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee executes an Acceptance Certificate, or (c) a termination of the Acquisition Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. *Security Interest.* The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. *Control of Acquisition Account.* In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "*Collateral*"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Arizona (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement, treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that the Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or

any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that the Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(c) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code,

notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. *Information Required Under USA PATRIOT ACT.* The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Acquisition Fund Custodian such information as it may request, from time to time, in order for the Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. *Miscellaneous.* (a) *Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Acquisition Fund Custodian or a consultant to Acquisition Fund Custodian with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Acquisition Fund Custodian unless the notice specifies a later time.

(b) Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:	Banc of America Public Capital Corp 11333 McCormick Road Mail Code: MD5-032-07-05 Hunt Valley, Maryland 21031 Attn: Contract Administration Fax: 443-556-6977
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If to Lessee: City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

If to Acquisition  
Fund Custodian: Deutsche Bank Trust Company Americas  
60 Wall Street, 27th Floor  
New York, New York 10005  
Attn: Lisa McDermid  
Phone: 212-250-6674  
Fax: 917-472-1575

(c) *Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Acquisition Fund Custodian certifies that it does not have scrutinized business operations in either Iran or the Sudan.

(d) *Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Acquisition Fund Custodian warrants Acquisition Fund Custodian's compliance with all Federal and State immigration laws and regulations that relate to Acquisition Fund Custodian's employees, as well as subcontractors of Acquisition Fund Custodian of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Acquisition Fund Custodian and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

IN WITNESS WHEREOF, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Acquisition Fund Custodian

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SCHEDULE 1**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR EQUIPMENT COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the “*Lease*”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) The date on which Equipment Acceptance occurred with respect to the portion of the Renewable Energy Equipment for which disbursement is hereby requested is \_\_\_\_\_, and such portion of Renewable Energy Equipment is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems

necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Renewable Energy Equipment is insured in accordance with the Lease.

(vi) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Lessor under the Lease

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 2**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR DELIVERY COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the “*Lease*”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts constituting Delivery Costs from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The Renewable Energy Equipment is insured in accordance with the Lease.

(iii) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(iv) The disbursement shall occur prior to \_\_\_\_\_, 2013.

(v) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(vi) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds to pay Delivery Costs  
from the Acquisition Fund in accordance with the  
foregoing Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Lessor under the Lease

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ACQUISITION FUND – ARIZONA)**

This Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (as further hereinafter defined, this “*Agreement*”) dated as of May \_\_, 2013, and entered into between Banc of America Public Capital Corp, a Kansas corporation (as further hereinafter defined, the “*Lessor*”), and the City of Flagstaff, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires to lease and acquire from Lessor certain Renewable Energy Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State of Arizona to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I**

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$\_\_\_\_\_. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Renewable Energy Equipment and to pay a portion of the Delivery Costs.

“*Acquisition Fund*” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

“*Acquisition Fund Agreement*” means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which the Acquisition Fund is established and administered.

“*Acquisition Fund Custodian*” means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_.

*“Agreement”* means this Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04 hereof.

*“Code”* means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

*“Commencement Date”* means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

*“Contract Rate”* means the rate identified as such in the Payment Schedule.

*“Delivery Costs”* means the costs incurred in connection with the execution and delivery of the Agreement, including counsel fees, fees and expenses of the Acquisition Fund Custodian and similar costs, fees and expenses.

*“Determination of Taxability”* means and shall be deemed to have occurred on the first to occur of the following: (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the holder thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the holder thereof; or (c) receipt by Lessor or Lessee of a written opinion of Bond Counsel that the interest component of any Rental Payment has become includable in the gross income of the holder thereof for federal income tax purposes.

*“Equipment Acceptance”* means, with respect to each portion of the Renewable Energy Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Renewable Energy Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement.

*“Equipment Costs”* means the total cost of the Renewable Energy Equipment, including related costs such as freight, installation and taxes and capitalizable costs incurred in connection with the acquisition, installation and/or financing of the Renewable Energy Equipment.

*“Equipment Schedule”* means the equipment schedule attached hereto as Exhibit A and made a part hereof.

*“Event of Default”* means an Event of Default described in Section 12.01 hereof.

*“Event of Taxability”* means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includable for federal income tax

purposes in a holder's gross income as a consequence of any act, omission or event whatsoever, as determined by a Determination of Taxability.

*"Lease Term"* means the Original Term and all Renewal Terms, with a final Renewal Term ending on October \_\_, 2028.

*"Lessor"* means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the right, title and interest of Lessor in and to the Renewable Energy Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01 hereof, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

*"Material Adverse Change"* means any change in Lessee's creditworthiness that could have a material adverse effect on (a) the financial condition or operations of Lessee, or (b) Lessee's ability to perform its obligations under this Agreement.

*"Original Term"* means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

*"Payment Schedule"* means the payment schedule attached hereto as Exhibit B and made a part hereof.

*"Rebates"* means, collectively, all incentives, rebates or credits available with respect to the Renewable Energy Equipment, and any additional incentives, rebates or credits that Lessee or Vendor may be entitled to as a result of the Renewable Energy Equipment.

*"Renewable Energy Equipment"* means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V hereof. Whenever reference is made in this Agreement to Renewable Energy Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Renewable Energy Equipment.

*"Renewal Terms"* means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

*"Rental Payments"* means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01 hereof, consisting of a principal component and an interest component.

*"State"* means the State of Arizona.

*"Taxable Date"* means the date on which the interest component of any Rental Payment is first includable in gross income of any holder thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.



“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Termination Value*” means the amount provided in the Payment Schedule.

“*2009 Capital Projects Financing Agreements*” means, collectively, (a) that certain Ground Lease dated as of July 1, 2009, as amended and supplemented, between the City of Flagstaff, Arizona, as lessor, and Wells Fargo Bank, N.A., as trustee, as lessee; (b) that certain Lease-Purchase Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, as lessor, and the City of Flagstaff, Arizona, as lessee; (c) that certain Trust Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, and the City of Flagstaff, Arizona and (d) other agreements and documents related to the foregoing, all with respect to the financing of certain Projects (as therein described and defined) on all or a portion of the real estate on which Renewable Energy Equipment is to be located.

“*Vendor*” means the manufacturer, installer or supplier of the Renewable Energy Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a municipal corporation duly incorporated and validly existing under the constitution and the laws of the State, with full power and authority to enter into this Agreement and the Acquisition Fund Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Acquisition Fund Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a municipal corporation.

(e) Lessee has complied materially with such public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Renewable Energy Equipment.

(f) During the Lease Term, the Renewable Energy Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Renewable Energy Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor, or provide written notice to Lessor that the same are available at an internal website: (i) annual audited financial statements (including, so long as required by such generally accepted accounting principles and practices (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal. The financial statements described in subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Renewable Energy Equipment and expects to make immediate use of the Renewable Energy Equipment. Lessee's need for the Renewable Energy Equipment is not temporary and Lessee does not expect the need for any item of the Renewable Energy Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Renewable Energy Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Renewable Energy Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may materially adversely affect Lessee's financial condition or impair its ability to perform its obligations under this Agreement or the Acquisition Fund Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Renewable Energy Equipment and the Acquisition Fund and Lessor's rights, interests and benefits under this Agreement and the Acquisition Fund Agreement.

(k) Lessee is the fee owner of the real estate where the Renewable Energy Equipment is and will be located and has good and marketable title thereto, and other than to the extent of the rights and interests created under the 2009 Capital Projects Financing Agreements, there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate (other than (i) liens for general ad valorem taxes and assessments, (ii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, and (iii) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record, in each case described in (i) through (iii), which will not, in the reasonable opinion of the Lessee, subject such real estate or any part thereof, to loss or forfeiture or materially impair the use of the real estate for its intended purposes).

(l) During the past ten (10) years, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No material event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) Lessee hereby acknowledges that the Lessor is relying on Lessee's procurement of (i) the energy savings guarantee from Ameresco and (ii) the Rebates as a material inducement for its execution and delivery of this Agreement. Lessee acknowledges that it must acquire and install the Renewable Energy Equipment by certain dates and comply with certain conditions relating to the Rebates in order obtain the Rebates. Lessee hereby agrees to use its best efforts to fulfill all requirements and meet all deadlines in order to obtain all such Rebates.

(n) Lessee hereby covenants and agrees to cooperate in all respects with Lessor in facilitating the prompt and careful removal and return of the Renewable Energy Equipment to Lessor from the real estate where the Renewable Energy Equipment is and will be located if at any time Lessor is entitled to have the Renewable Energy Equipment returned or delivered or it or entitled to repossession of the Renewable Energy Equipment pursuant to Section 3.03 or Section 12.02 hereof.

### ARTICLE III

*Section 3.01. Lease of Renewable Energy Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Renewable Energy Equipment and pay certain of the Delivery Costs. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Renewable Energy Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term and to pay the Rental Payments under the Lease through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments from its general fund and from any other funds legally available for the purpose as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Renewable Energy Equipment and peaceably remove and deliver at Lessee's expense the Renewable Energy Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Conditions to Lessor's Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund

Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the City Clerk or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) Opinions of counsel to Lessee, which taken as a whole, are substantially in the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

~~(vii) A waiver or waivers of interest in the Renewable Energy Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Renewable Energy Equipment will be located and/or landlord of the real estate on which the Renewable Energy Equipment will be located;~~ (viii) A copy of a fully completed and executed Form 8038-G and a fully completed and executed Arbitrage Certificate with respect to the Agreement;

~~(ix)~~ (viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided, however*, that no "Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 hereof have been delivered to Lessor;

~~(x)~~ (ix) A copy of each completed and executed application that Lessee is required to file, and has filed, in order to obtain the Rebates with respect to the Renewable Energy Equipment and evidence of such Rebates;

~~(xi)~~ (x) A copy of the fully executed Master Solar Agreement dated as of \_\_\_\_\_, 2013 between Ameresco Southwest, Inc. f/k/a APS Energy Services Company, Inc. ("*Ameresco*") and the Lessee including an energy savings guarantee from Ameresco with respect to the Renewable Energy Equipment; and

~~(xii)~~ (xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund as provided in the Acquisition Fund Agreement.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03 hereof, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03 hereof, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation by reason of any failure of the Renewable Energy Equipment to perform in the manner or to the extent that the Lessee anticipated from and after its acceptance or any failure to achieve cost or other savings that the Lessee anticipated, any other failure of the Renewable Energy Equipment, any defects, malfunctions, breakdowns or infirmities in the Renewable Energy Equipment, any disputes with the Vendor of any Renewable Energy Equipment or Lessor, any failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any Rebate or any payment for guaranteed energy savings by Vendor under the Vendor Agreement, any failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Renewable Energy Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.* (a) Lessee will not make or direct the making of any investment or other use of the proceeds of this Agreement which would cause this Agreement to be an “arbitrage bond” as that term is defined in section 148 (or any successor provision thereto) of the Code or a “private activity bond” as that term is defined in section 141 (or any successor

provision thereto) of the Code, and Lessee will comply with the requirements of the Code sections and related Regulations throughout the Lease Term. (Particularly, Lessee shall be the owner of the Equipment for federal income tax purposes. Lessee shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Equipment unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Equipment.) Also, the payment of the Rental Payments shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of this Agreement, or amounts treated as proceeds of this Agreement, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which this Agreement is being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury.

(b)(i) Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to comply with the requirements hereunder in order to ensure that the interest component of Rental Payments is excluded from gross income for federal income tax purposes under the Code; *provided, however*, compliance with any such requirement shall not be required in the event Lessee and Lessor receive an opinion of Bond Counsel signed by an attorney or firm of attorneys of national recognized standing in the field of law relating to municipal bonds selected by Lessee and reasonably acceptable to the Lessor that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of the interest component of Rental Payments, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event Lessee and Lessor receive such opinion, this Agreement shall be amended to conform to the requirements set forth in such opinion. (In consideration of the execution and delivery of this Agreement by Lessor and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, Lessee covenants, and the appropriate officials of Lessee are hereby directed, to take all action required or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion from gross income of the interest component of Rental Payments.)

(ii) In addition to Section 4.06 hereof, if for any reason any requirement hereunder is not complied with, Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence, and Lessee shall pay any required interest or penalty under Regulations section 1.148-3(h) with respect to the Code.

(c) Lessee shall comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of this Agreement (initially those specified in the Arbitrage Certificate delivered simultaneously herewith) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of the interest component of Rental Payments. Such experts and consultants shall be employed, as necessary, to make, as necessary, any calculations

in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code, particularly those specified in the Arbitrage Certificate delivered simultaneously with the original issuance of this Agreement.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the Taxable Date, and Lessee will pay such additional amount as will result in the holder thereof receiving the interest component of Rental Payments (from and after the Taxable Date) at the Taxable Rate.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## ARTICLE V

*Section 5.01. Delivery, Installation and Acceptance of Renewable Energy Equipment.* (a) Lessee shall order the Renewable Energy Equipment, cause the Renewable Energy Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all Equipment Costs and other costs in connection therewith. When the Renewable Energy Equipment has been delivered and installed, Lessee shall promptly accept such Renewable Energy Equipment and evidence said acceptance by executing and delivering to Lessor an "Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) relating to each item of Renewable Energy Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Renewable Energy Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Renewable Energy Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Renewable Energy Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Renewable Energy Equipment is located for the purpose of inspecting the Renewable Energy Equipment.



*Section 5.04. Use and Maintenance of the Renewable Energy Equipment.* Lessee shall not install, use, operate or maintain the Renewable Energy Equipment (or cause the Renewable Energy Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall obtain and provide all permits and licenses, if any, necessary for the installation and operation of the Renewable Energy Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Renewable Energy Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Renewable Energy Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Renewable Energy Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Renewable Energy Equipment as eligible for manufacturer's maintenance upon the return of the Renewable Energy Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Renewable Energy Equipment or install any accessory, equipment or device on an item of Renewable Energy Equipment if that would impair any applicable warranty, the originally intended function or the value of that Renewable Energy Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Renewable Energy Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## **ARTICLE VI**

*Section 6.01. Title to the Renewable Energy Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Renewable Energy Equipment shall be vested in Lessee immediately upon its acceptance of each item of Renewable Energy Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Renewable Energy Equipment from and against all claims, liens and legal processes of its creditors, and keep all Renewable Energy Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Renewable Energy Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Renewable Energy Equipment to Lessor in accordance with Section 12.02 hereof. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor's security interest or other

interest in the Renewable Energy Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Renewable Energy Equipment. During the Lease Term, Lessor will not claim ownership of the Renewable Energy Equipment for the purposes of any tax credits, benefits or deductions with respect to the Renewable Energy Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Renewable Energy Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Renewable Energy Equipment, the Acquisition Fund and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code of the State and treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Renewable Energy Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Renewable Energy Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Renewable Energy Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Renewable Energy Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## **ARTICLE VII**

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Renewable Energy Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Renewable Energy Equipment will be used for a governmental or proprietary purpose of Lessee and that the Renewable Energy Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Renewable Energy Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Renewable Energy Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Renewable Energy

Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Renewable Energy Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Termination Value of the Renewable Energy Equipment or (ii) the replacement cost of the Renewable Energy Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Renewable Energy Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Renewable Energy Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Renewable Energy Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Renewable Energy Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Renewable Energy Equipment, a payment and performance bond (“*Surety Bond*”) executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of “A-” or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Renewable Energy Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, installation, construction, maintenance and/or servicing of the Renewable Energy Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Renewable Energy Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee’s obligations hereunder.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Renewable Energy Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Renewable Energy Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE VIII**

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Renewable Energy Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Renewable Energy Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Renewable Energy Equipment or such part thereof and any balance of the Net Proceeds remaining after such

work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Renewable Energy Equipment (the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “Renewable Energy Equipment” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to equipment in accordance with Section 10.01(b) hereof.

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01 hereof, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Termination Value for the Renewable Energy Equipment, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Renewable Energy Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after paying the applicable Termination Value for such Renewable Energy Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## **ARTICLE IX**

*Section 9.01. Disclaimer of Warranties.* Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Renewable Energy Equipment, or any other warranty

or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Renewable Energy Equipment shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Renewable Energy Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02. Indemnification.* To the fullest extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless Lessor, its directors, officers, shareholders, employees, agents and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, installation, construction, or use of the Equipment. Notwithstanding the foregoing, Lessor shall not be indemnified for any liability solely and directly resulting from the gross negligence or willful misconduct of Lessor.

*Section 9.03. Vendor's Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Renewable Energy Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Renewable Energy Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Renewable Energy Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay or satisfy all its obligations hereunder, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* all other amounts then owing hereunder *plus* the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Renewable Energy Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Termination Value (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (x) the Termination Value relating to the Rental Payment immediately prior to the date of such prepayment plus (y) accrued interest on the

aggregate unpaid principal portion of Rental Payments immediately prior to the date of such prepayment) *plus* (iii) all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's security interests in and to such Renewable Energy Equipment will be terminated and Lessee will own the Renewable Energy Equipment free and clear of Lessor's security interest in the Renewable Energy Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Renewable Energy Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with

Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Renewable Energy Equipment and all rights in, to and under this Agreement related to such Renewable Energy Equipment, and all of Lessor's security interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit G attached hereto within five (5) business days after its receipt of such request.

***Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Renewable Energy Equipment or the Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.***

## ARTICLE XII

***Section 12.01. Events of Default Defined.*** Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided that*, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit (i) that is provided by Lessor or any affiliate of Lessor or (ii) under which there is outstanding, owing or committed an



aggregate amount in excess of \$1,000,000.00, in each case under which Lessee is an obligor, ~~if~~and such default remains uncured following the applicable cure period, if any, and either (i) arises ~~under any other~~from a failure to pay any amounts due with respect to such agreement for borrowing money, lease financing of property or provision of credit ~~provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000.00;~~and/or (3) causes or permits amounts to become immediately due and payable in full as a result of such default;

(e) A moratorium, debt restructuring (other than a refinancing or refunding), debt adjustment (other than a refinancing or refunding) or comparable restriction is imposed on or declared with respect to any obligations of the Lessee or Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; ~~or~~

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days; ~~or~~

(g) Any default occurs under any of the 2009 Capital Projects Financing Agreements and remains uncured following any applicable cure period, if any.

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Renewable Energy Equipment is located and retake possession of such Renewable Energy Equipment or require Lessee at Lessee's expense to promptly return any or all of such Renewable Energy Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Renewable Energy Equipment or, for the account of Lessee, sublease such Renewable Energy Equipment, continuing to hold Lessee liable, but solely from legally available

funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Renewable Energy Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Renewable Energy Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 hereof. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Renewable Energy Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Renewable Energy Equipment or the Acquisition Fund.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

### **ARTICLE XIII**

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.02. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.06. Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State.

*Section 13.07. Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*Section 13.08. Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Lessor certifies that it does not have scrutinized business operations in either Iran or the Sudan.

*Section 13.09. Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Lessor or a consultant to Lessor with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Lessor unless the notice specifies a later time.

*Section 13.10. Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Lessor warrants Lessor's compliance with all Federal and State immigration laws and regulations that relate to Lessor's employees, as well as subcontractors of Lessor of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Lessor and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:  
City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Counterpart No. \_\_\_\_\_ of **3** manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

## LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Payment Schedule
Exhibit C-1	—	Form of Authorizing Ordinance
Exhibit C-2	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Counsel Form
Exhibit E	—	Form of Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	Form of Notice and Acknowledgement of Assignment
Exhibit H	—	Form of Acquisition Fund and Account Control Agreement

## **EXHIBIT A**

### **EQUIPMENT SCHEDULE**

Location of Equipment: [To be provided by Lessee]

Equipment Description (Scope of Work): [To be provided Lessee]

**EXHIBIT B**

**PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Termination Value  (including prepayment premium, if applicable)

*Contract Rate.* The Contract Rate is \_\_\_\_% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01(a) of the Agreement, the Prepayment Purchase Option Commencement Date is \_\_\_\_\_.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-1

### FORM OF AUTHORIZING ORDINANCE

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT (ACQUISITION FUND – ARIZONA) WITH RESPECT TO THE ACQUISITION, INSTALLATION, PURCHASE, FINANCING AND LEASING OF CERTAIN RENEWABLE ENERGY EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Flagstaff (the “*Lessee*”), a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain Renewable Energy Equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Renewable Energy Equipment*”); and

WHEREAS, in order to acquire such Renewable Energy Equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates) (the “*Lessor*”) and that certain Acquisition Fund and Account Control Agreement (the “*Acquisition Fund Agreement*”) among the Lessee, the Lessor and the Acquisition Fund Custodian therein identified, and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement (collectively, the “*Financing Agreements*”) and the documentation relate to the financing of the Renewable Energy Equipment for the purchase, acquisition and leasing of the Renewable Energy Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the governing body of the Lessee as follows:

*Section 1. Approval of Financing Agreements* The form, terms and provisions of the Agreement and the Acquisition Fund Agreement are hereby approved in substantially the forms



presented at this meeting, with such insertions, omissions and changes as shall be approved by the [City Manager] of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the [City Manager] of the Lessee is hereby authorized and directed to execute, and the [City Manager] of the Lessee is hereby authorized and directed to attest and countersign, the Agreement (including any related Exhibits attached thereto) and the Acquisition Fund Agreement and to deliver the Agreement (including such Exhibits) and the Acquisition Fund Agreement to the respective parties thereto, and the [City Manager] of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Financing Agreements to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with either of the Financing Agreements.

*Section 3. No General Liability.* Nothing contained in this Ordinance, either Financing Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, either Financing Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Acquisition Fund Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and the Acquisition Fund Agreement.

*Section 5. Severability.* If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

*Section 6. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 7. Effective Date.* This Ordinance shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_ day of \_\_\_\_\_.

CITY OF FLAGSTAFF, ARIZONA,  
as lessee

[SEAL]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-2

### FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Flagstaff, Arizona ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Acquisition Fund and Account Control Agreement dated as of May \_\_, 2013 among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
Kevin Burke	City Manager	_____
Barbara Goodrich	Management Services Director	_____
Jerry Nabours	Mayor	_____

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Clerk

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

## EXHIBIT D

### FORM OF OPINION OF COUNSEL TO LESSEE (to be typed on letterhead of counsel)

[Closing Date]

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Flagstaff, Arizona (“*Lessee*”), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May \_\_, 2013, and Exhibits thereto by and between Banc of America Public Capital Corp (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Renewable Energy Equipment*”) and an executed counterpart of a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, dated May \_\_, 2013 (the “*Acquisition Fund Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the “*Transaction Documents*.”

Based on the foregoing, I am of the following opinions:

1. Lessee a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, and [has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Lessee has the requisite power and authority to lease and acquire the Renewable Energy Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Renewable Energy Equipment, the Acquisition Fund or other collateral thereunder.

**[6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of Arizona personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.]**

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

**EXHIBIT E**

**FORM OF ACCEPTANCE CERTIFICATE**

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Renewable Energy Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Renewable Energy Equipment for all purposes.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: \_\_\_\_\_

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

## EXHIBIT F

### FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 (the “*Agreement*”) between Banc of America  
Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as  
Lessee

In connection with the above-referenced Agreement, the City of Flagstaff, Arizona (the “*Lessee*”), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Renewable Energy Equipment. The dollar amount limit for property damage to the Renewable Energy Equipment under such self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for property damage to the Renewable Energy Equipment which policy has a dollar limit for property damage to the Renewable Energy Equipment under such policy of \$\_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment. The dollar limit for such liability claims under the Lessee’s self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment in the amount of \$\_\_\_\_\_.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee’s self-insurance liabilities is \$\_\_\_\_\_. [Amounts paid from the Lessee’s self-insurance fund are subject to a dollar per claim of \$\_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: \_\_\_\_\_. Amounts payable for claims from the such sources are limited as follows: \_\_\_\_\_.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT G

### FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED \_\_\_\_\_

BANC OF AMERICA PUBLIC CAPITAL CORP (“Assignor”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“Assignee”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “Agreement”) dated as of \_\_\_\_\_, between Assignor and the City of Flagstaff, Arizona (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Renewable Energy Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated May \_\_, 2013 (the “Acquisition Fund Agreement”) by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the “Assigned Property”).

1. Pursuant to the authority of Ordinance \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Renewable Energy Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “Acknowledgement”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$_____
Total Amount of Rents Remaining	–	\$_____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____
Funds Remaining in Acquisition Fund	–	\$_____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNOR:  
BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT H

### FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this “*Agreement*”), dated as of May \_\_, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as “*Lessor*”), the City of Flagstaff, Arizona, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (hereinafter referred to as “*Lessee*”) and Deutsche Bank Trust Company Americas (hereinafter referred to as “*Acquisition Fund Custodian*”).

Reference is made to that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 between Lessor and Lessee (hereinafter referred to as the “*Lease*”), covering the acquisition, installation and lease of certain Renewable Energy Equipment described therein (the “*Renewable Energy Equipment*”). It is a requirement of the Lease that the Acquisition Amount (\$\_\_\_\_\_) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the acquisition and installation of and payment for the Renewable Energy Equipment and payment of a portion of the Delivery Costs.

The parties agree as follows:

1. *Creation of Acquisition Fund.*

(a) There is hereby created a special trust fund to be known as the “City of Flagstaff, Arizona Renewable Energy Equipment Acquisition Fund” (the “*Acquisition Fund*”) to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Agreement, “Qualified Investments” means any investment permitted in accordance with Arizona Revised Statutes Section 35-323; *provided, however*, that each such investment shall be insured at all times by United States federal deposit insurance and the investment shall never be placed in an off-shore account.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition and installation of the Renewable Energy Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof and in accordance with Section 4.07 of the Lease.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

## 2. *Acquisition of Property.*

(a) *Acquisition Contracts.* Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition and installation of the Renewable Energy Equipment, with moneys available in the Acquisition Fund. Lessee represents that the estimated costs of the Renewable Energy Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition, installation or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Renewable Energy Equipment, and the operation and maintenance thereof.

(b) *Authorized Acquisition Fund Disbursements.* Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Renewable Energy Equipment and a portion of the Delivery Costs.

(c) *Requisition Procedure.* No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund for the payment of Delivery Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 2, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due, and that: (i) an obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid and attached thereto is the original invoice with respect to such obligation, (ii) the Renewable Energy Equipment is insured in accordance with the Lease, (iii) no event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date thereof, (iv) the disbursement shall occur prior to \_\_\_\_\_, 2013, (v) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof. Prior to disbursement from the Acquisition Fund for payment of Equipment Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and certifying the date of Equipment Acceptance for the portion of Renewable Energy Equipment for which disbursement is requested. Each such requisition shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) Equipment Acceptance has occurred as of the date identified therein with respect to the portion of Renewable Energy Equipment for which disbursement is requested; (ii) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof) and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment; (iii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iv) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (v) the Renewable Energy Equipment is insured in accordance with the Lease; (vi) no event of nonappropriation or Event of Default (nor any event which, with notice or lapse of time or both, would become an event of nonappropriation or an Event of Default) has occurred and is continuing; (vii) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease; and (viii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Acquisition Fund to pay Equipment Costs relating to a portion of the Renewable Energy Equipment prior to the date on which Lessee has certified to Acquisition Fund Custodian in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Renewable Energy Equipment for which funds are requested for disbursement from the Acquisition Fund.

3. *Deposit to Acquisition Fund.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Renewable Energy Equipment in excess of amounts available therefor in the Acquisition Fund and to pay Delivery Costs in excess of amounts available therefor in the Acquisition Fund.

4. *Excessive Acquisition Fund.* Any funds remaining in the Acquisition Fund on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee executes an Acceptance Certificate, or (c) a termination of the Acquisition Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. *Security Interest.* The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. *Control of Acquisition Account.* In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "*Collateral*"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Arizona (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement, treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that the Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or

any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that the Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(c) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code,



notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. *Information Required Under USA PATRIOT ACT.* The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Acquisition Fund Custodian such information as it may request, from time to time, in order for the Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. *Miscellaneous.* (a) *Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Acquisition Fund Custodian or a consultant to Acquisition Fund Custodian with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Acquisition Fund Custodian unless the notice specifies a later time.

(b) Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:	Banc of America Public Capital Corp
	11333 McCormick Road
	Mail Code: MD5-032-07-05
	Hunt Valley, Maryland 21031
	Attn: Contract Administration
	Fax: 443-556-6977

If to Lessee:                      City of Flagstaff, Arizona  
   211 West Aspen Avenue  
   Flagstaff, Arizona 86001  
   Attn: \_\_\_\_\_  
   Fax:        \_\_\_\_\_

If to Acquisition  
Fund Custodian:                Deutsche Bank Trust Company Americas  
   60 Wall Street, 27th Floor  
   New York, New York 10005  
   Attn:     Lisa McDermid  
   Phone:   212-250-6674  
   Fax:       917-472-1575

(c)     *Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Acquisition Fund Custodian certifies that it does not have scrutinized business operations in either Iran or the Sudan.

(d)     *Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Acquisition Fund Custodian warrants Acquisition Fund Custodian's compliance with all Federal and State immigration laws and regulations that relate to Acquisition Fund Custodian's employees, as well as subcontractors of Acquisition Fund Custodian of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Acquisition Fund Custodian and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

IN WITNESS WHEREOF, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Acquisition Fund Custodian

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR EQUIPMENT COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the “*Lease*”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) The date on which Equipment Acceptance occurred with respect to the portion of the Renewable Energy Equipment for which disbursement is hereby requested is \_\_\_\_\_, and such portion of Renewable Energy Equipment is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems

necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Renewable Energy Equipment is insured in accordance with the Lease.

(vi) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Lessor under the Lease

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 2**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR DELIVERY COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the “*Lease*”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts constituting Delivery Costs from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The Renewable Energy Equipment is insured in accordance with the Lease.

(iii) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(iv) The disbursement shall occur prior to \_\_\_\_\_, 2013.

(v) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(vi) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds to pay Delivery Costs  
from the Acquisition Fund in accordance with the  
foregoing Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Lessor under the Lease

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Barbara Goodrich, Management Services  
Director  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



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**TITLE:**

**Consideration and Adoption of Resolution No. 2013-11:** A resolution of the Mayor and Council of the City of Flagstaff, Arizona, declaring, for purposes of section 1.150.2 of the Federal Treasury Regulations, official intent to be reimbursed in connection with certain capital expenditures relating to the installation of three solar photo-voltaic systems.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2013-11 by title only
- 2) City Clerk reads Resolution No. 2013-11 by title only (if approved above)
- 3) Adopt Resolution No. 2013-11

**Policy Decision or Reason for Action:**

Approval of this resolution will allow the City to reimburse itself for expenditures made on behalf of three solar photo-voltaic systems planned for installation should the close of the financing not coincide with the construction timing.

**Financial Impact:**

Incurred expenditures will be reimbursed from the capital lease proceeds.

**Connection to Council Goal:**

Effective governance

**Has There Been Previous Council Decision on This:**

Yes.

May 7, 2013: First read of ordinance authorizing the Lease/Purchase agreement

April 2, 2013: Capital financing award to Banc of America Public Capital

March 15, 2010: Solar system installation award to Ameresco

**Options and Alternatives:**

- Approve the Reimbursement Resolution
- Do not approve the Reimbursement Resolution

**Background/History:**

In November 2009, staff was directed to develop renewable energy systems on City property. In March 2010, a solar installation contract was awarded to Ameresco (formerly APS Energy Services). Two phases have been completed and this financing is for the third phase which includes the Aquaplex, the Rio de Flag Wastewater Treatment Facility, and the Wildcat Treatment Facility totaling 802 kilowatts.

The first two phases were funded through Power Purchase Agreements (PPA). Under this model, the City does not retain an ownership interest in the solar systems but is provided a flat electricity rate for a 20 year period. The City will own the solar equipment installed as part of Phase 3. The City chose this financing model for Phase 3 primarily due to higher incentives and other cost savings that will generate overall savings to the City in excess of the cost of financing and the cost of power as offset through the incentives.

The City has awarded the lease purchase financing to Banc of America Public Capital. The City anticipates closing this loan on or about either May 24, 2013 or June 21, 2013. The reimbursement resolution is proposed as a backup measure in case any delays are encountered with the June closing date.

**Key Considerations:**

IRS regulations are very specific as to what capital expenditures are eligible for reimbursement. These expenditures must be any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax guidelines.

**Expanded Financial Considerations:**

The reimbursement resolution may be needed if there is any delay in the final closing of the financing agreement. The City would reimburse itself for any hard construction costs incurred before the closing. The City will then be responsible for paying the capital lease payments on a monthly basis for 15 years upon the project completion, estimated to be October 2013.

**Community Benefits and Considerations:**

This resolution allows capital project timing to not be hampered by the schedule needed to close financing.

**Community Involvement:**

Inform

**Expanded Options and Alternatives:**

- Approve the Reimbursement Resolution
- Do not approve the Reimbursement Resolution

---

**Attachments:**     Res. No. 2013-11

## **RESOLUTION NO. 2013-11**

### **RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING, FOR PURPOSES OF SECTION 1.150-2 OF THE FEDERAL TREASURY REGULATIONS, OFFICIAL INTENT TO BE REIMBURSED IN CONNECTION WITH CERTAIN CAPITAL EXPENDITURES RELATING TO THE INSTALLATION OF THREE SOLAR PHOTOVOLTAIC SYSTEMS**

#### **RECITALS:**

WHEREAS, the City of Flagstaff, Arizona, a political subdivision of the State of Arizona (hereinafter referred to as the "City"), is authorized and empowered pursuant to finance the costs of various capital facilities and equipment owned or to be owned by the City; and

WHEREAS, it is contemplated that certain expenditures made by the City with regard to capital facilities and equipment owned or to be owned by the City will be reimbursed from the financing proceeds in the future by or on behalf of the City;

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, THAT:**

Section 1. Definitions. The following terms shall have the meanings assigned thereto as follows:

"Official intent" means a declaration of intent of the City to reimburse an original expenditure with proceeds of an obligation.

"Original expenditure" means an expenditure for a governmental purpose that is originally paid from a source other than a reimbursement bond.

"Reimbursement bond" means the portion of an issue of obligations allocated to reimburse an original expenditure that was paid before the issue date of such issue.

Section 2. Official Intent. This Resolution is official intent relating to reimbursement for the original expenditures indicated in Exhibit A hereto which are capital expenditures (being any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles).

Section 3. Project Descriptions. The projects for which such original expenditures are to be paid are for those described on the Exhibit attached hereto and the maximum principal amount of obligations (including the reimbursement bonds for such purposes) to be issued for such projects will not exceed \$4,000,000.

Section 4. Reasonableness of Official Intent. On the date of this Resolution, the Mayor and Council of the City has a reasonable expectation (being that a prudent person in the same circumstances would have based on all the objective facts and circumstances) that it will

reimburse such original expenditures with proceeds of such obligations. (Official intents have not been declared by the Mayor and Council of the City as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for such projects. Moreover, the Mayor and Council of the City does not have a pattern (other than in extraordinary circumstances) of failure to reimburse actual original expenditures covered by official intents.)

Section 5. Reimbursement Period. With certain exceptions, an allocation in writing that evidences use of proceeds of the reimbursement bonds to reimburse the original expenditures shall be made not later than 18 months after the later of the date that the original expenditure is paid or the date the project is "placed in service," but in no event more than 3 years after the original expenditure is paid.

Section 6. Public Record. This Resolution shall be included as of the date hereof in the publicly available official records of the City, such records being maintained and supervised by the Clerk of the City, being the main administrative office of the City, and shall remain available for public inspection on a reasonable basis.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 21<sup>st</sup> day of May, 2013.

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MAYOR

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

## EXHIBIT A

## ORIGINAL EXPENDITURES INTENDED TO BE REIMBURSED

<u>Description of Original Expenditures</u>	<u>Amount of Expenditures</u>	<u>Dates of Original Expenditures</u>
Solar Photovoltaic Systems	\$4,000,000	After May 1, 2013

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Randy Whitaker, Project Manager  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



---

**TITLE:**

**Consideration and Approval of Intergovernmental Agreement Amendment:** Amendment Two to the Intergovernmental Agreement (IGA)/Joint Project Agreement (JPA) 11-097I between the City of Flagstaff (City) and the Arizona Department of Transportation (ADOT) for the FY2013 Highway Safety Improvement Program (HSIP), Beulah Bike Lanes.

**RECOMMENDED ACTION:**

Approve the IGA/JPA Amendment Two which will obligate additional FY2013 HSIP funding for design work for Beulah Bike Lanes in the amount of \$45,000.

**Policy Decision or Reason for Action:**

Original IGA/JPA and Amendment One included \$203,000 of the current construction project cost. Approving the IGA/Amendment Two will obligate an additional FY 2013 HSIP funding for the Beulah Bike Lanes in the amount of \$45,000 (Grant 94.3% = \$42,435, City Match 5.7% = \$2,565) which brings the total construction project cost to the current IGA/JPA of \$248,000.

**Subsidiary Decisions Points:**

This project is for design and construction of bike lanes along Beulah Boulevard between Woodland Village Boulevard and McConnell Drive. The additional width to accommodate bike lanes will be gained by removing or narrowing existing medians and narrowing lanes from 12 to 11 feet.

**Financial Impact:**

The purpose of this Amendment Two is to provide additional FY 2013 funding for the design work for Beulah Bike Lanes from the Highway Safety Improvement Program for the project. The total cost of the Beulah Bike Lanes is estimated to be \$248,000 and will be paid for from HSIP funds over the next five years (FY11-FY15 HSIP). The federal cost share is funded at \$233,864 (94.3%) and the City share at \$14,136.00 (5.7%). The project is identified in the Community Development Division, Transportation CIP (Account #040-9256-607-4099), City project number 03-11010.

**Connection to Council Goal:**

1. Repair Replace maintain infrastructure (streets & utilities)

**Has There Been Previous Council Decision on This:**

Yes, the original IGA/JPA for FY 2011 HSIP funds and Amendment One for design FY2012 HSIP funds.

**Options and Alternatives:**

- A. Approve the Joint Project Agreement
- B. Amend the Joint Project Agreement
- C. Reject the Joint Project Agreement

**Background/History:**

The purpose of the Highway Safety Improvement Program (HSIP) is to achieve a significant reduction in traffic fatalities and serious injuries on public roads. This is to be accomplished through the development and implementation of the Strategic Highway Safety Plan (SHSP) which is a statewide-coordinated safety plan that provides a comprehensive framework for reducing highway fatalities and serious injuries on all public roads. SHSP is intended to identify the State's key safety needs and guide HSIP investment decisions. Funding is from the U.S. Department of Transportation, Federal Highway Administration through ADOT which is responsible for administering the HSIP in Arizona.

**Key Considerations:**

The 2013 HSIP funds required an approved IGA/JPA to be obligated by ADOT. Any funding not obligated by the City or County in the FMPO Region within this fiscal year is returned to ADOT.

**Expanded Financial Considerations:**

The funding to-date is:

Original IGA FY2011 Design - \$25,000

Amendment #1 FY2012 Design - \$28,000

Amendment #1 FY2014 Construction - \$150,000

This IGA/JPA Amendment Two for FY2013 HSIP will fund the Beulah Bike Lanes project in the amount of \$45,000 for design in FY2013. The Total Cost of the Beulah Bike Lanes is estimated to be \$248,000 and will be paid for from HSIP funds over the next five years.

**Community Benefits and Considerations:**

Will provide a safer route for bicycles along Beulah Boulevard which is part of the goals in the regional plan.

**Community Involvement:**

Inform:

Although there has been no formal public involvement process, this project has been approved by the Flagstaff Metropolitan Planning Organization for inclusion in the Transportation Improvement Program which incorporates public notification and participation in their meetings.

**Expanded Options and Alternatives:****A. Approve the JPA**

- Pros: Project will proceed providing enhanced bicycle safety.
- Cons: Additional matching funds and staff time are required.

**B. Amend the JPA**

- Pros: Cannot be determined without knowing amendment
- Cons: Additional staff time to discuss with ADOT, creating a project delay.

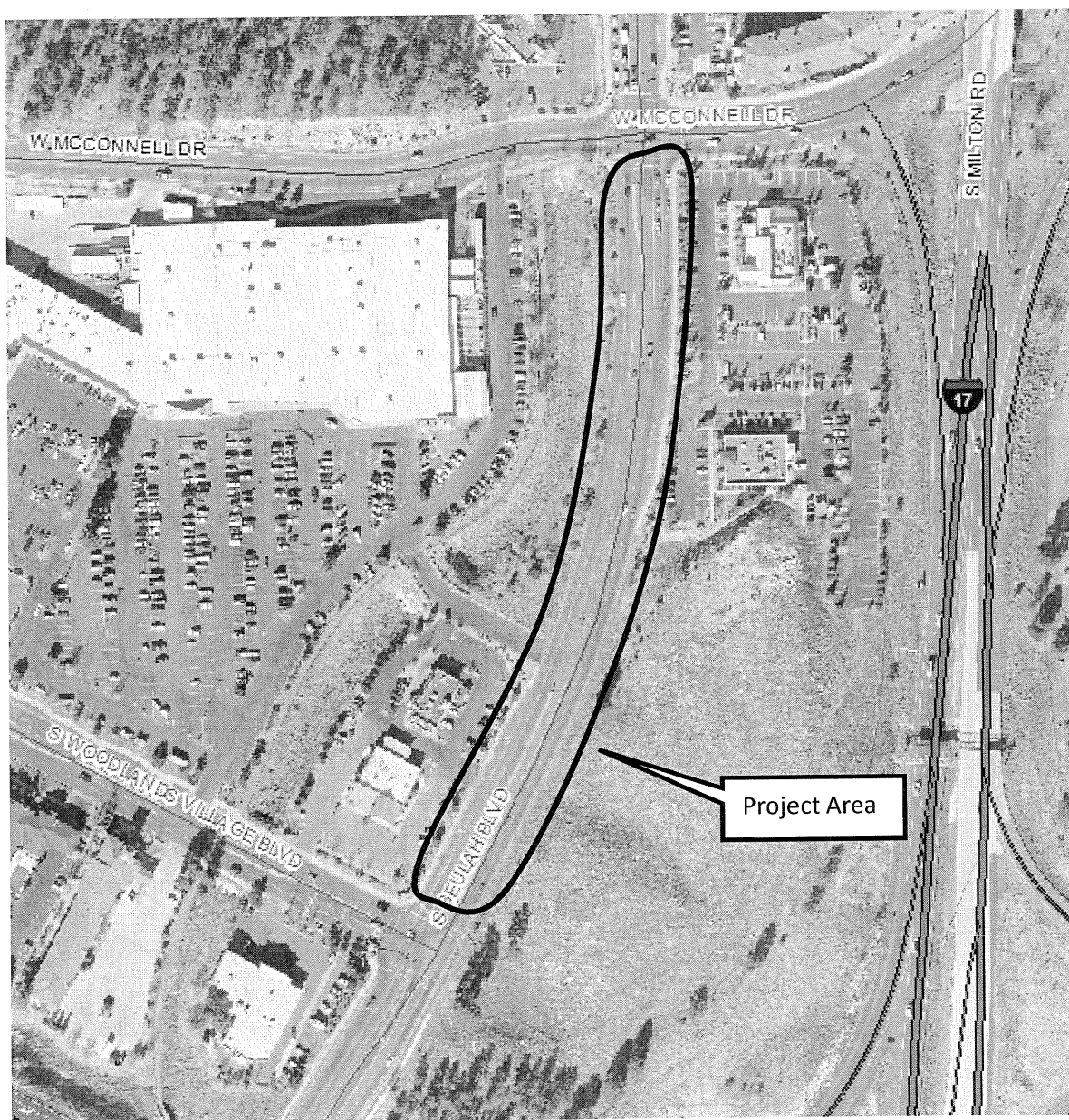
**C. Reject the JPA**

- Pros: Grant requirements would not apply to the Construction phase of the project including Davis/Bacon wage compliance, DBE and buy American requirements.
- Cons: Additional grant funds would not be obtained and City would need to identify funding for project.

---

**Attachments:**    [Vicinity Map](#)  
                          [IGA/JPA 11-097-I Amendment Two](#)  
                          [FMPO 5-Year Plan](#)  
                          [ADOT Eligibility Letter](#)





Vicinity Map

ADOT File No.: IGA/ JPA 11-097-I  
ADOT CAR No.: 13-0000960-I  
**Amendment No. Two**  
AG Contract No.: P0012011001475  
Project: Study and Preliminary  
Engineering for Design  
Section: Bike lanes on both sides of  
Beulah Boulevard  
**Federal Project No.: FLA-0(206)A**  
**ADOT Project No.: SH50803D**  
**COG/MPO TIP Item No.: FMPO**  
**Budget Source Item No.: 72811 &  
72812 & 2013**

**AMENDMENT NO. TWO  
TO  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF FLAGSTAFF

**THIS AMENDMENT**, entered into this date \_\_\_\_\_ 2013, pursuant to Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City"). The City and State are collectively referred to as the "Parties."

**WHEREAS**, the INTERGOVERNMENTAL AGREEMENT, JPA/IGA 11-097-I, A.G. Contract No. P0012011001475, was executed on June 14, 2011, and Amendment One executed on June 11, 2012, and

**NOW THEREFORE**, in consideration of the mutual agreements expressed herein, the purpose of this Amendment Two is to provide additional FY 2013 funding for design work, from the Highway Safety Improvement Program (HSIP) for the Project. The Parties agree to amend the Agreement as follows:

**I. RECITALS**

1. The State is empowered by Arizona Revised Statute § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Amended Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statute § 48-401 to enter into this Amended Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

**Article I. Paragraph 7 is revised to increase additional Design funding as follows:****Funding breakdown:****SH50803D (Scoping/Design):**

Federal-aid funds @ 94.3%	\$ 23,575.00
LOCAL Funds @ 5.7%	<u>\$ 1,425.00</u>
<b>Subtotal – Scoping/Design</b>	<b>\$ 25,000.00</b>

Federal-aid funds @ 94.3%	\$ 26,404.00
LOCAL Funds @ 5.7%	<u>\$ 1,596.00</u>
<b>Subtotal – Scoping/Design</b>	<b>\$ 28,000.00</b>

**SH50803D (Scoping/Design):**

Federal-aid funds @94.3% (additional funding)	\$ 42,435.00
City's Match @ 5.7%	<u>\$ 2,565.00</u>
<b>Subtotal – Scoping/Design</b>	<b>\$ 45,000.00</b>

<b>TOTAL Design Cost</b>	<b>\$ 98,000.00</b>
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**SH508 01C (construction):**

Federal-aid funds @ 94.3%	\$ 141,450.00
LOCAL Funds @ 5.7%	<u>\$ 8,550.00</u>
<b>Subtotal – Construction*</b>	<b>\$ 150,000.00</b>

<b>Total Federal Funds</b>	<b>\$ 233,864.00</b>
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<b>Total LOCAL Funds</b>	<b>\$ 14,136.00</b>
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<b>TOTAL Project Cost</b>	<b>\$ 248,000.00</b>
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Under the terms of the original Agreement and Amendment No. One, the State has received payment from the City for the City's local design match in the amount of \$3,021.00 and construction match in the amount of \$8,550.00.

**II. SCOPE OF WORK:**

Article II. Paragraph 1.d will be deleted and replaced with the following:

1. The State will:

d. Upon execution of this Agreement, and prior to authorizing additional funding invoice the City for the City's additional design share of the Project, currently estimated at \$ 2,565.00. Consistent with the terms of the original Agreement and Amendment No. One, the City was invoiced and has remitted \$3,021.00 towards the design phase of the Project. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

Article II, Paragraph 2.b will be deleted and replaced with the following:

2. The City will:

b. Upon execution of this Agreement, prior to authorizing additional funding and within thirty (30) days of receipt of an invoice from the State remit to the State the City's additional design share of the Project, currently estimated at \$ 2,565.00. Be responsible for any difference between the estimated and actual costs. Consistent with the terms of the original Agreement and Amendment No. One, the City has remitted and the State has received \$3,021.00 towards the design phase of the Project. The total amount of federal funds allocated for the design of the Project is \$ 92,414.00.

### III. MISCELLANEOUS PROVISIONS:

This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

**ALL NOTICES OR DEMANDS** upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Flagstaff  
Attn: Randy Whitaker  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
Phone # (928) 607-9241  
rwhitaker@flagstaffaz.org

**PURSUANT TO ARIZONA REVISED STATUTE § 11-952 (D)**, attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

**EXCEPT AS AMENDED** herein, **ALL OTHER** terms and conditions of the original Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment the day and year first above written.

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**CITY OF FLAGSTAFF**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
**JERRY NABOURS**  
Mayor

By \_\_\_\_\_  
**Brent Cain P.E.**  
Deputy State Engineer, Urban Operations

ATTEST:

By \_\_\_\_\_  
**ELIZABETH A. BURKE**  
City Clerk  
eburke@flagstaffaz.gov

**JPA 11-097-I**  
ADOT CAR No.: 13-0000960-I  
**AMENDMENT No. TWO**

**ATTORNEY APPROVAL FORM FOR THE CITY OF FLAGSTAFF**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF FLAGSTAFF, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013

\_\_\_\_\_  
City Attorney

Table 6. Safety Projects with the FMPO -area: FY 2014-2018  
Fiscal Years 2014-2018 as of 4/25/13

fmco_cog	project_sponsor	tip_id_#	project_name	project_location	length	federal_functional_class	lanes_before	lanes_after	FY 2011 - Obligated Funds	FY 2012 (in \$000s)	FY 2013 (in \$000s)	FY 2014 (in \$000s)	FY 2015 (in \$000s)	FY 2016 (in \$000s)	FY 2017 (in \$000s)	FY 2018 (in \$000s)	federal_aid_type	federal_funds 2013-2017	local_match 2013-2017	Total Proj
fmco	Flagstaff	f61102	Zuni/Lone Tree Intersection Improvement*	n/a	arterial	2	2	230	170	65							HSIP	\$ 65	\$ 65	100% funds
			Lone Tree Road and Zuni Drive Intersection design & Construction																	
			Phase:					\$	\$	d	d	c								
fmco	Flagstaff	f61201	Sign replacement region	n/a	n/a	n/a	n/a			30	200				185	300	HSIP	\$ 715	\$ 43	\$ 758
			Safety upgrade							d,c					c					
fmco	Flagstaff	f61103	Transverse Pavement Markings City - multiple locations	n/a	n/a	n/a	n/a	150	152								HSIP	\$ -		100% funds
			Upgrade style & material					c	c											
			Phase:																	
fmco	Flagstaff	f61401	Switzer Canyon/Turquoise Intersection Improvement*	n/a	Urban collector	n/a	n/a							1360			HSIP	\$ 1,360		\$ 1,360
			Switzer Canyon/Turquoise Drive Intersection construction																	100% funds
			Phase:																	
fmco	Flagstaff	f61105	Beulah Bike Lanes	0.22	Urban collector	2	2	25	28	45	300						HSIP	\$ 345	\$ 21	\$ 366
			Beulah Boulevard: Woodlands Village to McConnell																	
			Median adjustment, restriping																	
			Phase:																	
fmco	Flagstaff	f61107	Guardrail Improvement Program City - multiple locations	n/a	n/a	n/a	n/a	110	250						365	300	HSIP	\$ 1,065		100% funds
			Study, then replace deficient					d	d											
			Phase:																	
fmco	Flagstaff	f61108	Regional Safety Project Scan	n/a	System	n/a	n/a								50		HSIP	\$ 50		100% funds
			Phase:																	
fmco	Coconino	Loans	Year and Amount Loaned	n/a	System	n/a	n/a			-490	-300						HSIP	\$ -		100% funds
			Year Received							30				760						
			Year Borrowed																	
			Year Paid																	
			TOTAL COSTS					-600	-600	-110	-330	-600	-1,360	-600	-600	-600		-\$ 3,600		
			FUNDING					600	600	600	600	600	600	600	600	600				
			Loans/(Debts)							-490	-270	0	760							
			BALANCE					0	0	0	0	0	0	0	0	0				



APR 4 - 2013

Intermodal Transportation

Janice K. Brewer, Governor  
John S. Hallkowsky, Director  
Jennifer Toth, Deputy Director  
Robert Samour, Senior Deputy State Engineer, Operations  
Dallas Hammit, Senior Deputy State Engineer, Development

April 1, 2013

Karla Petty, Division Administrator  
Federal Highway Administration  
Arizona Division Office  
4000 N. Central Ave., Suite 1500  
Phoenix, Arizona 85012-3500

Attn: Kelly LaRosa, P.E., AICP, Safety Programs Engineer

Subject: **FY11 – FY15 HSIP Local Government Project, Dated 05/25/11 (Revised)**  
City of Flagstaff – Beulah Boulevard Bike Lanes  
ADOT Project (TRACS) Number: SH508 03D  
Federal Aid Number: FLA-O(206)A  
Coconino County, Flagstaff District

Dear Ms. LaRosa:

The Arizona Department of Transportation (ADOT) requests Federal Highway Administration (FHWA) funding eligibility concurrence for revised design costs for the following safety improvement project under the Highway Safety Improvement Program (HSIP) as requested by the City of Flagstaff.

The City of Flagstaff has eligibility approval to utilize HSIP Regionally Managed Safety funding to procure design services and construct bike lanes on both sides of Beulah Boulevard. The initial scope of work included the removal of 4-foot concrete medians, installation of 2-foot concrete medians, narrowing of existing landscaped median from 16 to 12 feet and obliteration and restriping of the roadway as determined in the preliminary engineering phase. This project had a B/C Ratio of 1.47.

The design and construction of the HSIP eligible improvements are eligible to be funded at 94.3% Federal share per 23 U.S.C. 120 (c) as described in Code of Federal Register 23 CFR Part 924 with a funding match of 5.7% by the City of Flagstaff. The revised anticipated total cost of this project is \$248,000.00 as broken out below.

Initial approved HSIP funding (05/25/11) included:

**FY11 Preliminary Engineering**

HSIP Local Gov.	\$23,575.00
Local Match	\$1,425.00
Estimated Total	\$25,000.00



**FY11 Anticipated Cost – Construction FY15**

HSIP Local Gov.	\$141,450.00
Local Match	\$8,550.00
Estimated Total	\$150,000.00

Revised approved HSIP funding (06/01/12) included:

**FY12 Preliminary Engineering**

HSIP Local Gov.	\$26,404.00
Local Match	\$1,596.00
Estimated Total	\$28,000.00

Requested additional HSIP funding (3/26/13):

**FY13 Preliminary Engineering**

HSIP Regionally Managed	\$42,435.00
Local Match	\$2,565.00
Estimated Total	\$45,000.00

Additional funds are required to obtain unanticipated environmental, utility, material and ROW clearances and cover additional ADOT administrative costs.

All work will be performed in the City of Flagstaff's right of way and no utility relocation will be required.

Please note that eligibility does not give you authorization to begin work. A revised JPA will need to be completed between ADOT and the City of Flagstaff prior to May 1, 2013 and all ADOT clearances will need to be completed prior to Federal construction authorization being requested. Any construction work performed prior to Federal authorization is not eligible for reimbursement.

If the project scope of work changes or the cost estimate increases by more than 20%, a revised eligibility letter and application will have to be submitted prior to obligation of funds.

If you have any questions regarding this HSIP funding request, please contact me at (602) 712-7374.

Sincerely,



Mona Aglan-Swick, P.E.  
HSIP State Manager  
ADOT-Traffic Safety Section

FHWA Concurrence: *Kelly Lakasa*

Date: *4/4/13*

Comments:

## Memorandum

**14. A.**

### CITY OF FLAGSTAFF

**To:** The Honorable Mayor and Council  
**From:** Stacey Button, Economic Vitality Director  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



---

#### **TITLE:**

**Presentation:** Northern Arizona Center for Entrepreneurship and Technology (NACET) periodic update.

#### **DESIRED OUTCOME:**

For information only.

#### **INFORMATION:**

Russ Yelton, President/CEO of Northern Arizona Center for Entrepreneurship and Technology (NACET), will present a periodic update at the Work Session on April 30, 2013. NACET is the City's operating tenant for the business incubator located on McMillan Mesa.

Topics to be discussed include general updates, three (3) tenant/affiliate presentations, and the status of NACET's Revolving Loan Fund. Russ will be presenting and is available to answer any questions. Any supporting documents will be made available that evening.

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#### **Attachments:**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



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**TITLE:**

**Consideration and Approval of Amendments:** Flagstaff City Council Rules of Procedure.

**RECOMMENDED ACTION:**

Approve the proposed changes to Rules 4.01, 5.01, 10.9, 11.01, and 11.05 (all related to *Discussion Items* and *Possible Future Agenda Items*) of the Flagstaff City Council Rules of Procedure.

**Policy Decision or Reason for Action:**

During the recent Budget Retreat a discussion was held on proposed changes to the Council's Rules of Procedure that would clarify the process for a Councilmember to get an item on a future agenda. The attached changes reflect the discussion held at that time.

**Financial Impact:**

None

**Connection to Council Goal:**

11. Effective governance

**Previous Council Decision on This:**

The City Council discussion potential changes to the Rules of Procedure at the end of the recent Budget Retreat to address the process of Councilmember(s) getting an item on a future agenda.

**Options and Alternatives:**

- 1) Approve the proposed changes
- 2) Not approve the proposed changes
- 3) Approve other changes

**Background/History:**

Discussion was recently held during the Budget Retreat by the City Council on possible changes to the Rules of Procedure that would clarify the process for Councilmember(s) to have an item placed on a future agenda. The attached document reflects those changes discussed, and includes changes to other sections of the Rules that previously referred to *Discussion Items*. While it is not written within the document itself, it was also discussed and suggested that the agenda will include a notation that any public comment to be made on an item listed under *Possible Future Agenda Items* should be made during the first *Public Participation* section of the meeting.

**Community Involvement:**

Inform

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**Attachments:**     Proposed Changes

**RULES OF PROCEDURE**  
for the  
**FLAGSTAFF CITY COUNCIL**

**Rule 1**  
**GENERAL RULES**

[Flagstaff City Charter Art. II, §14]

**1.01 Rules of Procedure; Journal**

The Council shall determine its own rules and orders of business, and shall provide for keeping a record of its proceedings. The record of proceedings shall be open to public inspection.

**1.02 Written Rules, Order of Business, and Procedure**

These Rules of Procedure of the Council shall be available to all interested citizens.

**Rule 2**  
**CODE OF CONDUCT & CONFLICTS OF INTEREST**

**2.01 Code of Conduct**

City Councilmembers occupy positions of public trust. All actions and business transactions of such officials dealing in any manner with public funds shall be in compliance with all laws or ordinances establishing a code of conduct for public officials or pertaining to conflicts of interest of public officials or employees.

**2.02 Participation and Voting Bar [A.R.S. §38-503]**

Any Councilmember prohibited from participating or voting on any matter before the City by the state conflict of interest laws shall make known such conflict on the record of any meeting where the item is discussed, and shall not enter into discussion, debate, or vote on such matter.

**Rule 3**  
**COUNCIL MEETINGS**

[Flagstaff City Charter Art. II, §12 and 13]

**3.01 Regular Meetings**

The City Council shall hold regular meetings on the first and third Tuesday of January, February, March, April, May, June, July, September, October, November, and December, and on the fourth Tuesday of August unless a majority of the Council decides to postpone or cancel such meeting. No change shall be made in regular meeting times or place without a published seven day notice.

Regular meetings shall consist of a 4:00 p.m. and 6:00 p.m. meeting. The 4:00 p.m. portion of the meeting will include Approval of Minutes, Appointments, Liquor License Hearings, Consent Items, and Routine Items. At the agenda review work session one week prior to the regular Council Meeting, the City Council may direct that any of the agenda items be moved to the 4:00 p.m. or 6:00 p.m. portion of the meeting. At the 4:00 p.m. meeting, the Council may vote to defer any item on that portion of the agenda to the 6:00 p.m. meeting.

The 6:00 p.m. meeting is intended for items of specific interest to the community or items that may require extended discussions, as well as advertised public hearings. The agenda shall include carryover items from the 4:00 p.m. meeting, public hearings, regular agenda items, and discussion items.

If the day fixed for any regular meeting of the Council falls upon a day which the City observes as a legal holiday, the meeting may be cancelled or held at a time and date designated by the Council. All regular meetings of the Council shall be held in the City Hall Council Chambers. No change shall be made in regular meeting times without a published seven-day notice. However, the Mayor or City Manager may change the Council meeting location to adjust to a specific need for additional space required to accommodate a large citizen turnout, upon giving the public notice of such change pursuant to notice requirements. All regular meetings of the Council shall be open to the public.

### **3.02 Special Meetings**

Special meetings may be called by the City Manager, three or more members of the Council, or by the Mayor. The Council may hold any other meetings it deems necessary at such times and locations as it determines appropriate under the circumstances for the purposes of addressing specific issues, specific neighborhood's concerns, strategic planning, budgeting, or for any other purpose allowed by law, so long as notice of such meeting has been given in accordance with the Arizona Open Meeting Law. The City Clerk shall prepare written notice of special sessions, stating time, place, and agenda; this notice shall be given personally, or by telephone, to each member of the Council, the City Manager, and the City Attorney, and shall be posted no later than twenty-four hours in advance of the special meeting. If an emergency requires an earlier meeting of the Council than allowed by this rule, Rule 3.05 pertaining to emergency meetings shall be followed.

### **3.03 Work Sessions and Agenda Review**

Work sessions are public meetings held for the following purposes: (1) briefing Councilmembers on items included on the Council's regular meeting agenda, (2) discussion of long range plans and programs for which no immediate action is required, (3) detailed discussion of matters which may soon be placed on a regular meeting agenda, and (4) exchange of information between the staff and Council. No formal vote shall be taken on any matter under discussion, nor shall any Councilmember enter into a commitment with another respecting a vote to be taken subsequently in a public meeting of the Council, providing that nothing herein shall prevent the Council from giving staff direction on any matter under discussion. Any formal action, however, must be scheduled for Council action at a regular or special Council meeting.

The City Council may hold work sessions every second and fourth Tuesday of each month at 6:00 p.m. When there are five Tuesdays in a month, work sessions will be held on the second and fifth Tuesdays. No meetings will be held on the fourth Tuesday of a five-Tuesday month or, on the last Tuesday of December, unless otherwise agreed to by a majority of the Council.

The work session held the Tuesday prior to a regular Council meeting shall include two reviews of the action items on the next week's regular Council agenda, including a determination as to which items shall be placed on the 4:00 p.m. meeting agenda or the 6:00 p.m. portion of the meeting agenda. The preliminary review of the draft Council meeting agenda shall be placed first on the work session agenda and will have as its purpose the identification of items that the Council designates for more detailed discussion after all other work session items have been discussed. In the final agenda review that shall occur as the last regularly scheduled item on the agenda, the Council may discuss items on the next week's agenda and give direction to the City Manager as to additional information needed. Public comment need not be taken, but may be accepted at the second agenda review, at the discretion of the Chair.

No work sessions will be held during the summer break period beginning on the day following the third Tuesday in July until the fourth Tuesday of August, unless called as a special meeting as provided in Section 3.02 of these Rules.

### **3.04 Executive Sessions [A.R.S. §38-431.03]**

The Council may meet in, or recess into, executive session for all purposes allowed by law. The City Manager shall schedule any such meetings on the second and fourth Tuesdays at 4:00 p.m., or earlier as the need arises, prior to work sessions, but an executive session may be scheduled at any other time where circumstances require more immediate action. When there are five Tuesdays in a month, executive sessions shall be held on the second and fifth Tuesday at 4:00 p.m., or earlier, as needed. An executive session may be convened at a special meeting called for that purpose on a majority vote of the members of the Council, or during a regular meeting, special session, or work session of the Council for legal advice on matters on a meeting's properly noticed agenda. Attendance at the executive session shall be limited to members of the City Council, the City Manager and City Attorney or their designees, and appropriate City staff or consultants to the City as the Council may invite or as may be required for advice or information. No formal vote involving final action shall be taken on any matter under discussion while in an executive session, except the Council may instruct its attorneys and representatives as allowed by law.

### **3.05 Emergency Meetings [A.R.S. §38-431.02]**

In case of an actual emergency, the Council may hold a meeting, including an executive session, upon such notice as is appropriate to the circumstances, but shall post a public notice within twenty-four hours declaring that an emergency session has been held, and setting forth the agenda of specific items discussed, considered, or decided.

### **3.06 Minutes of Meeting [A.R.S. §38-431.01]**

Except as otherwise provided by state law, there shall be minutes of all Council meetings. Such minutes shall include, but need not be limited to: (1) the date, time, and place of the

meeting; (2) the members of the City Council recorded as either present or absent; (3) a general description of the matters considered; (4) an accurate description of all legal actions proposed, discussed, or taken, and the names of members who propose each motion; and (5) the name of persons, as given, making statements or presenting material to the Council and a reference to the legal action about which they made statements or presented material. Minutes of all meetings, except executive sessions, shall be open to public inspection.

## Rule 4 **THE COUNCIL AGENDA**

### **4.01 Procedures for Preparation of Council Agendas**

All reports, communications, ordinances and resolutions, contracts or other documents, or other matters to be submitted to the Council as part of the Council meeting agenda packet shall be available to the Council, along with a staff summary by the Friday preceding the agenda review work session for the draft agenda and by the Friday preceding the regular meeting for the regular agenda. The City Manager shall review items submitted for timeliness and completeness of information and shall make a preliminary determination whether an item should be placed on the 4:00 p.m. or 6:00 p.m. portion of the regular meeting agenda.

The City Manager shall honor any request by a member of the Council to include an item on the ~~Council Discussion~~ **Possible Future Agenda Items** portion of the agenda. A Councilmember may submit an item for consideration at any time and the City Manager will place it in a queue with other Council requests to be placed on an agenda. The date and time of scheduling shall be weighted with other Council priority requests. ~~The Council request for discussion of such item will be placed in the Council Discussion Section of the agenda. Upon a majority vote of the Council, discussion items will be moved to a regularly-scheduled Council meeting.~~ The requesting Councilmember may, but is not required to, specify in a memorandum what discussion, action, or options are proposed. **Public participation on an item placed in the Possible Future Agenda Items portion of the agenda will be limited to: 1) verbal comments taken during the public participation section(s) of the agenda; and 2) written comment cards submitted to the City Clerk that may be reviewed at any time during the meeting. Upon agreement of three members of the Council, the item will be moved to a regularly-scheduled Council meeting.**

Those items which are approved for the Council agenda by the City Manager shall be placed on the agenda in accordance with the order prescribed in Rule 5. Copies of the agenda and any background material shall be disseminated to the Mayor and the City Council in the manner prescribed by the Council; to the City Manager, the Deputy City Managers, the City Attorney, and the City Clerk; and shall be made available to the public no later than noon on the Friday preceding the Council meeting at which the agenda will be reviewed.

The agenda shall be made public in advance of the meeting by posting on the regular public posting board at City Hall and on the City's website. Such action shall be taken concurrently with the furnishing of the agenda to the City Council.



**Rule 5**  
**ORDER OF BUSINESS**

**5.01 Regular Meeting Agenda**

The agenda for regular meetings of the City Council shall follow the following order:

**4:00 P.M. MEETING**

Call to Order  
Roll Call  
Pledge of Allegiance and Reading of the Mission Statement  
Approval of Minutes of Previous Meetings  
Public Participation  
Proclamations and Recognitions  
Appointments  
Liquor License Public Hearings  
Consent Items  
Routine Items\*  
Recess

**6:00 P.M. MEETING**

Reconvene Regular Meeting  
Roll Call  
Carryover Items from 4:00 p.m. portion of Meeting  
Public Hearing Items  
Regular Agenda  
Discussion Items  
**Possible Future Agenda Items**  
Public Participation  
Informational Items and Reports to/from Council and Staff, and Requests for Future Agenda Items  
Adjournment

*\*Routine Items include those agenda items that are common, reoccurring, have been discussed at length in prior Council meetings, or are expected to have little to no public participation. They may include resolutions or ordinances.*

Consent Agenda items may be considered and acted upon by one motion, unless a Councilmember specifically requests that a consent item be considered and voted on separately. If related to a public hearing item on the agenda, ordinances or resolutions shall be placed under Public Hearings. Items requested for consideration and discussion by a Councilmember and placed in the **Council Discussion Possible Future Agenda Items** Section need not have a staff summary or staff review, but the requesting Councilmember may specify in a memorandum what discussion, action, or options are proposed. There will be no discussion of issues raised during public participation, information items and reports, or requests for future agenda items. The City Clerk shall enter into the minutes all consent items approved with one motion, and shall record separately action taken on those items considered separately.

**Rule 6**  
**PRESIDING OFFICER**

[Flagstaff City Charter Art. II, §7 and §8]

**6.01 Mayor as Chair**

The Mayor, or in his or her absence, the Vice Mayor, shall be the Chair for all meetings of the Council.

**6.02 Temporary Chair**

In case of the absence of the Mayor and the Vice Mayor, the City Clerk shall call the Council to order. If a quorum is found to be present, the Council shall proceed to elect, by a majority of those present, a Chair for the meeting.

**Rule 7**  
**MEETING DECORUM AND ORDER**

**7.01 Decorum and Order among Councilmembers**

The Chair shall preserve decorum and decide all questions of order, subject to appeal to the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the Rules of the Council. Every Councilmember desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the question under debate and shall avoid all personal attacks and indecorous language. A Councilmember once recognized shall not be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another Councilmember. If a Councilmember is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he or she shall remain silent or shall alter his or her remarks so as to comply with the Rules of the Council. Councilmembers shall confine their questions to the particular issues before the Council. If the Chair fails to act, any member may move to require him or her to enforce the Rules and the affirmative vote of the majority of the Council shall require the Chair to act.

If Council discussion of a matter exceeds one hour, each Councilmember shall limit their subsequent remarks to three minutes.

**7.02 Decorum and Order among City Staff**

The Chair shall have the authority to preserve decorum in meetings as far as the audience, staff members, and city employees are concerned. The City Manager shall also be responsible for the orderly conduct and decorum of all City employees under the City Manager's direction and control. Any remarks shall be addressed to the Chair and to any or all members of the Council. No staff member, other than the staff member having the floor, shall enter into any discussion either directly or indirectly without permission of the Chair.

### **7.03 Decorum and Order among Citizen Participants**

Citizens attending Council meetings shall also observe the same rules of propriety, decorum, and good conduct applicable to members of the Council. Any person making personal, impertinent, and slanderous remarks, or who becomes boisterous while addressing the Council during a Council meeting, may be removed from the room if so directed by the Chair, and such person shall be barred from further audience before the Council. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Chair, who may direct the Sergeant-at-Arms to remove such offenders from the room. Should the Chair fail to act, any member of the Council may move to require the Chair to enforce the Rules, and the affirmative vote of the majority of the Council shall require the Chair to act. Political campaigning is prohibited. Any member of the public desiring to address the Council on any non-public hearing item may, and on any public hearing item shall be recognized by the Chair pursuant to Rule 9, shall state his or her name and city of residence in an audible tone for the record, and shall limit his or her remarks to the questions under discussion. Any remarks shall be addressed to the Chair and to any or all members of the Council.

Citizens are allowed to address the Council a maximum of three times throughout the meeting, including comments made during Public Participation. Other than Public Participation, comments shall be limited to the business at hand.

## **Rule 8**

### **RIGHT OF APPEAL FROM THE CHAIR**

#### **8.01 Process for Appeal**

Any Councilmember may appeal to the Council from a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain the Chair's ruling. There shall be no debate on the appeal, and no other member shall participate in the discussion. The Chair shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of the members present vote "aye", the ruling of the Chair is sustained; otherwise, it is overruled.

## **Rule 9**

### **PUBLIC PARTICIPATION IN COUNCIL DISCUSSIONS**

#### **9.01 Non-Public Hearing Discussions**

Any person wishing to speak on any matter on the agenda before the Council shall fill out a comment card and submit that card to the recording clerk, who will deliver the card to the Chair. The Chair need not accept public discussion on a non-public hearing item. If the Chair recognizes a speaker, the Chair shall limit the period of speaking to a reasonable period of time of no more than three minutes per person, at the discretion of the Chair. The person desiring to speak shall limit his or her remarks to the matter under discussion and shall address his or her remarks to the Chair. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

## **9.02 Public Hearings**

- A. In the case of a public hearing, the Chair shall announce prior to such hearing the total time limit, if any, to be allowed for public debate, depending upon the circumstances and public attendance. The Chair shall also announce the time limits for each individual speaker (normally no more than three minutes), and that no speaker may be heard more than once.
- B. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.
- C. Speakers may not cede any portion of their allotted time to another speaker.
- D. The order of presentation and time limits shall be as follows:
  - 1. Staff presentation (ten minute time limit, except with specific Council permission to exceed this limit).
  - 2. Applicant presentation, only upon applicant's specific request (up to ten minutes, except with specific Council permission to exceed this limit).
  - 3. Council's questions to staff and applicant.
  - 4. Public comment (three minutes for individual speakers, up to fifteen minutes for a representative of ten or more persons present at the meeting who have contributed their time to the representative),
  - 5. Applicant's response, only upon applicant's specific request (5 minutes),
  - 6. Staff's response (5 minutes),
  - 7. Council deliberation and questions to staff and applicant.
- E. This rule will not preclude questions from members of the Council to the speaker where it is deemed necessary for purposes of clarification or understanding, but not for purposes of debate or argument.

### **Rule 10**

#### **RULES GOVERNING MOTIONS BY THE COUNCIL**

##### **10.01 Motion to be Stated by the Chair - Withdrawal**

When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

##### **10.02 Motion to Suspend Rules**

Suspension of these Rules requires a majority consent of the Councilmembers present. A motion to suspend may not be made while another motion is pending unless it directly applies to the pending motion.

### **10.03 Motion to Change Order of Agenda**

The Chair may, at his or her discretion, or shall, upon the majority vote of Councilmembers present, change the order of the agenda. However, caution should be given to not changing the order to circumvent the Open Meeting Law.

### **10.04 Motion to Table**

A motion to table is used to delay discussion on an item until later in the meeting or until the next meeting. Neither the motion to table or other business can be discussed, until a vote has been taken on the motion. If the motion is successful, no further discussion can be had without a motion to take off the table. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote.

If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.

### **10.05 Motion to Postpone**

A motion to postpone is in order when an item is rescheduled to a time certain, when it is delayed with conditions, or when the matter is intended to be disposed of without action. If the motion prevails, the item shall return for Council action at the meeting specified or in accordance with the conditions established in the postponement. A motion to postpone may be debated prior to vote, but no other motion, including a motion to amend, may be offered until the vote is taken and only if the motion to postpone fails.

A motion to postpone indefinitely, if it receives a majority vote, effectively extinguishes an item.

### **10.06 Motion to Divide the Question**

If the question contains two or more divisionable propositions, the Chair may, and upon request of a member shall, divide the same.

### **10.07 Motion to Amend**

On a motion to amend or “strike out and insert”, the motion shall be made so that the intent of the amendment is clear to the Council and public, and for the record.

### **10.08 Motion to Amend an Amendment**

A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order.

### **10.09 Motion to Reconsider**

After the decision on any question, any member who voted with the majority may move for a reconsideration of any action at the same meeting or at the next regular meeting that occurs at least one week after the date the action was taken. In the event of a tie vote on

a motion, any Councilmember may move for reconsideration at the next regular meeting of the City Council that occurs at least one week after the date the action was taken, but not thereafter. To ensure that the matter will be included on the posted agenda in conformance with the Open Meeting Law, any Councilmember who wishes to have a decision reconsidered must alert the city clerk in writing at least five (5) days, exclusive of Saturdays, Sundays, and intermediate holidays, prior to the meeting at which the motion to reconsider will be made, unless the motion to reconsider was made and seconded at a Council meeting. A motion to reconsider shall require the affirmative vote of the majority of the members present at the time of reconsideration. After a motion for reconsideration has once been acted on, no other motion for reconsideration of the same subject shall be made without unanimous consent of all Councilmembers.

After the reconsideration time period has expired, the same matter may be placed on a later Council meeting agenda under Council ~~Discussion Items~~ Possible Future Agenda Items at the request of any Councilmember. It shall require the sponsorship of ~~four~~ three Councilmembers during ~~Council Discussion~~ Possible Future Agenda Items to be placed on a future agenda as an action item. If the matter is considered for formal action on a future meeting, the motion for or against taking an action need not be made by a member of the prevailing vote.

#### **10.10 Motion for Roll Call Vote**

Any Councilmember may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. The roll may be called for yeas and nays upon any questions before the Council. Unless allowed by the Chair, it shall be out of order for members to explain their vote during the roll call, or to engage in additional debate or discussion on the subject after the vote is taken.

### **Rule 11** **MISCELLANEOUS PROVISIONS**

#### **11.01 Prior Approval by Administrative Staff**

Except as to matters requested by individual Councilmembers under the ~~Council Discussion~~ Possible Future Agenda Items Section of the agenda, all ordinances, resolutions and contract documents shall, before presentation to the Council, have been approved as to form and legality by the City Attorney or his or her authorized representative, and shall have been examined for practicality by the City Manager or his or her authorized representative.

#### **11.02 Placement of Items on Agendas for Council Action**

Pursuant to Council direction received during any Council meeting, the City Manager may present ordinances, resolutions, and other matters or subjects to the Council, and any Councilmember may assume sponsorship thereof by moving that such ordinances, resolutions, matters or subjects be adopted. In addition, ordinances, resolutions and other matters or subjects requiring action by the Council may be introduced and sponsored by a member of the Council through the ~~Council Discussion~~ Possible Future Agenda Items ~~item~~ process described in Rule 4.01.

### **11.03 No New Agenda Items after 10:00 p.m. except by Majority Vote.**

No new agenda items shall begin after 10:00 p.m. unless approved by majority vote of the City Council. If, however, discussion on an item commences prior to 10:00 p.m., the Council may continue its deliberation or move to postpone that item. Agenda items on a Council agenda not considered will be placed on the immediately succeeding Council meeting.

### **11.04 Robert's Rules**

Robert's Rules of Order, latest edition, shall serve as a guideline for interpretation of and supplementation for these Rules in all cases to which they are applicable, provided they are not in conflict with these Rules or with the Charter of the City of Flagstaff or the laws of the State of Arizona. The interpretation of these Rules and Robert's Rules shall be guided by the principles underlying Parliamentary law, that is, a careful balance of the rights of individuals and minority subgroups of the council with the will of the majority. In no case shall the strict application of a rule or procedure be interpreted to deny any individual or minority the right to participate in a debate, discussion, or vote, nor shall these rules be interpreted in such a way so as to defeat the will of the majority of the whole of the Council.

### **11.05 Citizen Petitions [Flagstaff City Charter Art. II, §17]**

A citizen or a group of citizens may present a written petition to the City Manager, who shall present it to the Council at its next regular meeting. The Council must act on the petition within 31 days of the City Manager's presentation. Citizen petitions will first be placed on the agenda under "~~Council Discussion Items~~ Possible Future Agenda Items" to determine if there is Council interest in placing the item on a future agenda for consideration. Failure to give such direction shall constitute "action" for purposes of this section.



## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Michael Scheu, Building Official  
**Date:** 05/15/2013  
**Meeting Date:** 05/21/2013



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### TITLE:

**Consideration and Adoption of Resolution No. 2013-10:** A resolution of the City Council of the City of Flagstaff, Arizona, declaring as a public record that certain documents filed with the City Clerk entitled the "2012 International Family of Codes, and the 2013 Amendments to City Code, Title 4, Building Regulations, and the ICC A117.1 Accessible and Usable Buildings and Facilities Standard, 2009 Edition" which includes the International Building Code 2012 Edition; International Residential Code, 2012 Edition; International Plumbing Code, 2012 Edition; International Mechanical Code, 2012 Edition; International Fuel Gas Code, 2012 Edition; International Existing Building Code, 2012 Edition; International Energy Code, 2012 Edition; ICC A117.1, Accessible and Usable Buildings and Facilities Standard, 2009 Edition; and providing for amendments, additions, and deletions thereto.

### RECOMMENDED ACTION:

- 1) Read Resolution No. 2013-10 by title only
- 2) City Clerk reads Resolution No. 2013-10 by title only (if approved above)
- 2) Adopt Resolution No. 2013-10

### Policy Decision or Reason for Action:

Adoption of Ordinance No. 2013-12, also on this agenda for consideration, will incorporate the 2012 International Family of Codes, 2009 Addition, the Accessible and Usable Buildings and Facilities Standard, and the 2013 Building Code Amendments to the Flagstaff City Code, Title 4, Building Regulations into the Flagstaff City Code.

There is a State Legislative House Bill 2404 that has passed the Senate and is currently being considered in the House of Representatives which would prohibit Cities and Towns from requiring a HERS rating greater than 80.

### Financial Impact:

Adoption of an amendment eliminating the requirement for waterless urinals and replacing them with a urinal having a maximum 1 pint flush will reduce costs.

There will be some increased costs due to some of the changes in the building codes. For the energy code, a 30% increase in energy efficiency over the 2006 energy code will incorporate numerous changes. According to an energy report conducted in Salt Lake City by the BCAP, Building Codes Assistance Project, there is an average additional cost of \$1,926-\$2,215 over the the 2006 energy code for a 2,400 square foot home.

Coconino County has estimated that the prescriptive attic insulation requirements which would require raised heel trusses would have an increased cost of a minimum 5% on the truss package.



**Connection to Council Goal:****11. Effective governance**

By Adopting the 2012 International Codes and the proposed 2013 amendments to the City Code, Title 4, the life safety of buildings will be retained along with reduced energy consumption in residential and commercial buildings. The City will also take advantage of new technical innovations and the cities ISO rating will change remain level.

**Has There Been Previous Council Decision on This:**

Yes. The 2009 International Codes was brought before the previous council for adoption in July of 2011. Council voted to bypass the 2009 codes and go to a 6 year code adoption cycle.

**Options and Alternatives:**

- 1) Council could adopt all the proposed 2012 Codes as written and the 2013 Building Code Amendments as amended.
- 2) Council could elect to adopt the proposed 2012 Building Codes, and adopt the 2009 Energy Code, and the amended 2013 Building Code Amendments.
- 3) Council could elect to adopt the 2012 Building Codes, adopt portions of the 2012 Energy Code, and adopt the amended 2013 Building Code Amendments.
- 4) If no updating of the Codes were to occur by October of 2013, the ISO would raise the insurance rating to a classification 9 causing an increase in insurance rates.

**Background/History:**

The Building Safety Program is responsible for reviewing and adopting building codes in consideration of current life safety issues and building industry standards. Since April 13, 1937, the City of Flagstaff has been reviewing and adopting various building, plumbing, mechanical, electrical, gas and fire code to better serve the community. The last major code review and adoption was the 2006 Edition of the International Codes, by Ordinance 2007-47, on January 18, 2008. In 2011, the council approved going to a 6 year code cycle instead of a 3 year cycle.

**Key Considerations:**

By adopting the 2012 codes, there will be 2 cycles of code changes that will be incorporated in the codes. In the Energy Code, Chapter 4 is the residential requirements and Chapter 5 is the commercial requirements. Most of the sections are prescriptive requirements but there are some mandatory requirements also. There is also Section R405 which allows for a performance-based compliance based on simulated energy performance which shows that the proposed design will have an annual energy cost that is less than or equal to the annual energy cost of the standard reference design. In both sections, there are certain "mandatory" requirements that are required for both the prescriptive and performance methods of compliance. This will allow a builder to be innovative to find other methods to meet the energy saving goals.

**Expanded Financial Considerations:**

There will be a cost of approximately \$3,500 for new code books and \$2,000 for training of the plans examiners and inspectors.

**Community Benefits and Considerations:**

By adopting the 2012 codes, the City's ISO rating will remain at a Class 2 rating which will keep local insurance rates from increasing. Also, by constructing new residential and commercial projects to the 2012 International Energy Conservation Code, the community is assuring that the new structures being added to the inventory will save on energy, thus enhancing a viable sustainable future.

**Community Involvement:**

Public code forums were held from February 2012 to January 2013 with a suspension from May 2012 to October 2012 due to work load. Information and invites were sent to NABA, F3, local architects and engineers, NAGBC, local contractors and designers plus individuals who asked to be placed on the email list, the Sustainability Commission and on May 8, staff will be meeting with the Chamber of Commerce. Coconino county will be considering adopting the 2012 Codes later this year.

Through the public forums, it was requested that the following be amended out of the International Residential and International Energy Conservation codes. 1). the requirement for a whole house ventilation system, (staff agrees with this amendment), 2). Blower door tests, (staff agrees with this amendment), 3). The requirement of testing the plastic drainage piping with water only. (Staff agrees to stay with the option of using air or water for testing plastic drainage and vent piping).

Staff met with the Sustainability Commission and asked for the commission's approval or disapproval of changing the waterless urinal requirement to allow a 1 pint maximum flush urinal. The commission voted to allow the 1 pint maximum flush urinal.

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**Attachments:**     [Resolution 2013-10](#)  
                              [Title 4](#)  
                              [Energy Code](#)  
                              [Code/Amendment comparison](#)

**RESOLUTION NO. 2013-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENTS FILED WITH THE CITY CLERK ENTITLED THE "2012 INTERNATIONAL FAMILY OF CODES, AND THE 2013 AMENDMENTS TO CITY CODE, TITLE 4, BUILDING REGULATIONS, AND THE ICC A117.1 ACCESSIBLE AND USABLE BUILDINGS AND FACILITIES STANDARD, 2009 EDITION" WHICH INCLUDES THE INTERNATIONAL BUILDING CODE 2012 EDITION; INTERNATIONAL RESIDENTIAL CODE, 2012 EDITION; INTERNATIONAL PLUMBING CODE, 2012 EDITION; INTERNATIONAL MECHANICAL CODE, 2012 EDITION; INTERNATIONAL FUEL GAS CODE, 2012 EDITION; INTERNATIONAL EXISTING BUILDING CODE, 2012 EDITION; INTERNATIONAL ENERGY CODE, 2012 EDITION; ICC A117.1, ACCESSIBLE AND USABLE BUILDINGS AND FACILITIES STANDARD, 2009 EDITION; AND PROVIDING FOR AMENDMENTS, ADDITIONS AND DELETIONS THERETO**

**ENACTMENTS:**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

That certain document entitled "*The 2012 International Family of Codes, the 2013 Amendments to City Code Title 4, Building Regulations*" and the *ICC A117.1, Accessible and Usable Buildings Standard, 2009 Edition, of the City of Flagstaff, Arizona,*" three copies of which are on file in the office of the City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the City of Flagstaff Council and approved by the Mayor of the City of Flagstaff this 21<sup>st</sup> day of May, 2013.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**201~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE,  
TITLE 4, BUILDING CODE**

**TITLE 4  
BUILDING REGULATIONS**

**CHAPTERS:**

**4-01 ADMINISTRATIVE ENACTMENTS (Page 2)**

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# 201~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE

## CHAPTER 4-01 ADMINISTRATIVE ENACTMENTS

The following applies to Chapters 4-01 through 4-09

### SECTIONS:

#### 4-01-001-0001 DEFINITIONS

4-01-001-0002 ADOPTION OF 20~~06~~12 INTERNATIONAL BUILDING, RESIDENTIAL, AND PLUMBING CODES, WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; 2011 NATIONAL ELECTRICAL CODE, WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; 20~~06~~12 INTERNATIONAL MECHANICAL CODE, WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; 20~~06~~12 INTERNATIONAL FUEL GAS CODE WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; 2012 INTERNATIONAL EXISTING BUILDING CODE WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; ICC A117.1-2009 Accessible And Usable Building And Facilities; 1997 UNIFORM HOUSING CODE WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; 1997 UNIFORM ADMINISTRATIVE CODE, WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO; AND 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, WITH AMENDMENTS, ADDITIONS, AND DELETIONS THERETO.

#### 4-01-001-0003 SAVING CLAUSE

#### 4-01-001-0004 VIOLATION AND PENALTIES

#### 4-01-001-0005 AMENDMENTS, ADDITIONS AND DELETIONS

#### 4-01-001-0001 Definitions

As used in this City of Flagstaff 201~~13~~ Building Code Amendments and all of the referenced herein adopted International Codes, the following terms shall have the meaning herein prescribed:

- A. Wherever the word "Municipality" or "[Name of Jurisdiction]" is used, it shall be mean the City of Flagstaff.
- B. Wherever the term "Department of Building Safety" is used, it shall mean "Development Services Division."
- C. Wherever the term "Corporation Counsel" is used in this Chapter, it shall mean the Attorney for the City of Flagstaff (Ordinance 587:8-14-62).
- D. Wherever the term "Administrative Authority" is used in conjunction with publicly provided utilities (natural gas, electricity, internet and broad band service, telephone, and cable television), it shall mean the current contract company providing the respective service. Wherever the term "Administrative Authority" is used in conjunction with publicly provided utilities or permits (water, sewer, storm water management and/or building permits), it shall mean the City of Flagstaff.

4-01-001-0002 Adoption of 20~~06~~12 International Building, Residential, and Plumbing Codes, with amendments, additions, and deletions

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**thereto; 2011 National Electrical Code, with amendments,  
additions, and deletions thereto;**

There are hereby adopted by the City Council of the City of Flagstaff for the purposes of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, alteration, removal, maintenance of buildings and structures, including permits and penalties, those certain International Codes known and referred to with particularity as the International Building Code (IBC), 20~~06~~12 Edition, providing for amendments, additions and deletions thereto and International Residential Code (IRC), 20~~06~~12 Edition, providing for amendments, additions and deletions thereto; International Plumbing Code (IPC), 20~~06~~12 Edition, providing for amendments, additions and deletions thereto, the 2011 National Electrical Code, providing for amendments, additions and deletions thereto; International Mechanical Code, 20~~06~~12 Edition, providing for amendments, additions and deletions thereto; International Fuel Gas Code, 20~~06~~12 Edition, providing for amendments, additions and deletions thereto; International Existing Building Code, 20~~06~~12 Edition, providing for amendments, additions and deletions thereto; ICC A117.1-2009, Accessible And Usable Building And Facilities; Uniform Housing Code, 1997 Edition, Uniform Administrative Code, 1997 Edition, and Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, three (3) copies of which are on file in the office of the City Clerk of the City of Flagstaff, and the same made part hereof by this reference as if fully and completely herein set forth. The provisions of the aforesated Codes, 20~~06~~12 editions, shall be controlling for construction within the corporate limits of the City of Flagstaff.

## **4-01-001-0003 SAVING CLAUSE**

Nothing in this Chapter or in the International Building Codes hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinances replaced hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this Chapter.

## **4-01-001-0004 VIOLATION AND PENALTIES**

- A. Violations. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any building or permit the same to be done in violation of this Code.
- B. Penalties. Any person, firm, or corporation violating any provision of this Code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this Code occurs or continues, shall be deemed to constitute a separate offense.

## **4-01-001-0005 Amendments, Additions, and Deletions**

The following provisions shall have the effect of either amending, adding to, or deleting from the International Codes 20~~06~~12 Editions and the National Electrical Code , 2011 Edition.

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(Amended, Ord. 2009-06, 07/18/2009; Amended Ord. No. 2011-12, (July 19, 2011))

## CHAPTER 1, ADMINISTRATION

Amend Section R103.1 IRC and 103.1 IBC to read:

The Development Services Section, Building Safety Program, is appointed as the regulating office and the Building Official is known as the code official.

(Amended Ord. No. 2011-12, (July 19, 2011))

Revise the amendments to Sections R104.7, 104.7, and 104.8 by striking the third paragraph:

The Building Official shall keep comprehensive records of applications or permits issued, or certificates issued or inspections made, or reports rendered and of notices of orders issued.

All such records shall be open to public inspection for good and sufficient reasons at the stated office hours but shall not be removed from the office of the Building Official without his written consent. All records are kept in both hard copy and electronic format. The electronic format information may be requested on a "walk-in" basis and reviewed during normal working hours; copies or inspection of original documentation requires written notice and reasonable amount of time for Staff to collect the required records from an off-site warehouse location. Written requests will go through the City Clerk's office for processing. (Amended Ord. No. 2011-12, (July 19, 2011))

Amend Table R301.2 (1) "Climatic and Geographic Design Criteria" as follows:

This information may be used by Design Professionals in lieu of the tables provided in Chapter 16 of the International Building Code (IBC), 2006 Edition.

<del>Roof Snow Load: (Measured on the roof)</del>	<del>40 pounds per square foot</del>
Ground Snow Load (where accounting has been given for factored snow loads as given in ASCE 7, Chapter 7. No reduction for slopes less than 45 degrees without providing engineering and/or approval by the Building Official)	50 pounds per square foot
Wind Speed:	90 miles per hour
Wind Exposure Category:	"B"
Seismic Design Category:	"C"
Weathering:	Severe
Frost line depth:	30 inches
Termite:	Moderate to Heavy
Decay:	Moderate
Rain fall - 100 year	2.5 inches per hour
Winter Design Temperature:	4 degrees (F)
Ice Shield Under-layment Req'd:	Yes

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Flood Hazards:	1-19-83; 9-18-90*
Air Freezing Index:	1014
Mean Annual Temperature:	45.4 degrees (F)
Climate Zone (IECC, Table 301.1):	Zone 5

- \* The flood hazard dates reflect the current National Flood Insurance Program and the date of the currently effective "Firm" Map (used by the City of Flagstaff). These maps are updated by the issuing agency and adopted by Storm Water Management without notice.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Sections R105.2 and 105.2, Work Exempt from Permits, by adding:

Garden walls, fences less than 6 feet in height, decks/patios less than 30" above finished grade and all ~~accessory shed~~ structures under 200 square feet will require a ~~zoning~~ Minor Improvement permit as approved under COF Ordinance 2006-12

(Amended Ord. No. 2011-12, (July 19, 2011))

Delete Sections R105.5 IRC and 105.5 IBC, Expiration, and replace with:

Every residential permit issued shall become invalid unless the work authorized by such permit is completed within one year (365 days) from the issuance date of the building permit. The Building Official is authorized to grant, when request for extension is received in writing, one extension not to exceed 180 days. The extension shall demonstrate cause such as financial, weather delays, material delivery, etc. The permit may be extended for an additional year (365 days) by paying one half the original permit fee (not including the plan check fee), thereby allowing a maximum time of completing the project to 30 months. Failure to obtain a certificate of occupancy within 30 months shall result in a report being recorded with the Coconino County Recorder's office for incomplete work or no final inspection report of the project. All residential "over-the-counter" permits for plumbing, mechanical, electrical and re-roofing shall be valid for a maximum period of 180 days.

All commercial construction permits for new, remodels, additions, and alterations shall be valid for a maximum period of 720 days. One extension shall be granted for an additional 360 days when requested in writing and justifiable cause is demonstrated. After the one time extension has expired, the next additional extension will require the applicant to pay one-half the permit fee for an additional 360 day extension. Permits not passing final inspection over 1440 days will be expired and the applicant must submit for a new permit and pay all associated fees. All commercial "over-the-counter" permits for plumbing, mechanical, electrical and re-roofing shall be valid for a maximum period of 180 days.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section 105.2, Electrical, by adding:



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Approved portable equipment used in conjunction with special events in public locations (parks, parking lots, public owned land, et cetera) of 25 kw or greater will have an over-the-counter electrical permit issued and a licensed electrical contractor for installation or set up.

The issuance of an electrical permit shall not be construed as an approval by the electrical inspector of any diagrams, drawings, specifications, or details of such contemplated work insofar as the same or any portion thereof is in conflict with this Chapter or any other rules or regulations governing electric installations in the City of Flagstaff. The holder of an electrical permit shall not do or perform any work other than that designated in the application for said permit without first notifying the electrical inspector and paying the additional fee therefore. No work shall be permitted at any location other than that designated by the permit. The electrical inspector must be given immediate notice when an installation is ready for either rough or final inspection.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section 105 IBC by adding Section 105.8, Temporary Permit:

Section 105.8. Temporary Permit. Permits may be issued by the Building Official for the use of certain classes of temporary open wiring such as for carnivals, fairs, demonstrations, evangelistic meetings, town parties, auction sales, and others. Such permits shall be granted for a period of two (2) weeks only, with a possible extension of one (1) week if the circumstances are justified in writing to the Building Official. No such temporary permits shall be granted in succession at the same location, and under no circumstances shall any person connect or put into service any temporary wiring until a permit has been obtained.

Temporary permits shall also be granted for the use of temporary wiring for lights and power on buildings under construction. Such permits are void automatically upon cessation of active construction or when, in the judgment of the Building Official, such wiring becomes hazardous. Provisions of Article 525 of the National Electrical Code (NEC), 2011 Edition shall be followed with respect to temporary wiring.

(Amended Ord. No. 2011-12, (July 19, 2011) )

Amend Section R106.1.1, Information on Construction Documents, by deleting the first sentence and replace with:

Construction documents shall be drawn upon suitable material, drafting paper, vellum, etc. and shall be a maximum size of 24" x 36", size D paper. The minimum size of drawings that have the minimum required drawings (site plan, foundation plan, floor plans for each floor, elevations, framing plans, roof & floor manufactured layout plans, critical sections, and details will be 18" x 24"). Floor framing, foundation, roof framing and floor plans must be drafted to the same scale, i.e., ¼"=1'-0". The minimum size for amended cut-sheets or details will be 8-1/2" x 11" and will not exceed the maximum sheet size.

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Larger sized drawings must be approved by the Building Official and justification established for why drawings can't be presented on the smaller size sheets. [It is expected that larger commercial projects will fall into this exception]. The written scope or description of the work may be provided on the building permit application form as long as it describes accurately the work to be performed.

All structural elements (i.e., posts and beams) shall be on the related plan sheet(s) which corresponds to the work being proposed.

Embedded anchors shall be on the foundation plan. Post bases/caps shall be on the framing plan or shown on specific details for the assembly.

Each floor shall have its own framing plan. First floor framing will not be superimposed on second floor framing or roof framing plans as an example.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section 106.1 IBC, Submittal Documents, by adding:

Residential, single family detached, structures are exempt from the requirements for a Design Professional under Arizona Revised Statutes (ARS 32-121 et. seq.) unless circumstances dictate the need for professional design submittal. Duplexes and triplex units which do not exceed 3,000 square feet, two stories or a total occupant load of 20, may also be designed by a non-registrant as long as the unit(s) has/have only one owner.

Sub-assemblies, such as roof trusses or manufactured floor beams that indicate all imposed loading may be submitted without the "stamp" of an Arizona certified or registered Design Professional.

Any retaining walls having any imposed surcharges from adjacent structural elements or unbalanced loading that exceed four (4) feet (1224 mm), shall be designed by an Arizona certified or registered Design Professional and shall be submitted at the time of permit application.

Pursuant to Arizona Revised Statutes § 32-121 et.seq. governing the regulation of Design Professionals (i.e. architects and engineers), all commercial occupancies for new construction, additions, alterations or repairs within the City of Flagstaff shall be prepared by an Arizona certified or registered Design Professional in good standing when:

1. The total square footage of any building exceeds 3,000 square feet, or
2. The total occupancy of the building exceeds 20 people, or
3. Any structural member required for the project exceeds twenty feet (20') in length.

The certified or registered Design Professional of Record must provide his/her "stamp" upon all working drawings. Drawings not prepared by the Design Professional of Record may be annotated as such, but the "stamp" shall be affixed to all the drawings in the construction working

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drawings set to indicate that coordination of the total project has been done by the Design Professional of Record.

A design professional is required for electrical service entrance sections of 600 amps and greater.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Sections 108.4 and R108.4 by adding:

Any person who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to an investigation fee of \$94.00 or twice the permit fee, whichever is greater.

Any person who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to an investigation fee of \$94.00 or twice the permit fee, whichever is greater.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Sections R108.5 IRC and 108.5 IBC, Related Fees, by adding:

The fee schedule shall be based upon the 1997 Uniform Administrative Code, Table 3D, and shall be annually reviewed and the revised fees published by the Building Safety Program, Development Services Section. Valuation fees for commercial work shall be annually reviewed in accordance with the International Code Council Building Safety Journal Fee structure. Residential fee valuation shall be subject to approval for increases by the City of Flagstaff Council based upon the recommendation of the Building Official and shall be published for public review.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Sections R108.6 IRC and 108.6 IBC, Refunds, by adding:

The applicant may receive up to 80% refund for the total building permit fee if no work has begun and no inspections have been performed. No refund of the plan review fee is authorized after the permit has been issued. The refund of a plan review fee is also limited to 80%, assuming that no review has been performed. The Building Official shall determine, based upon work done, how much of fees paid are actually refunded. There shall be no refund of any required deposit once the administrative routing and plan review process has begun.

(Amended Ord. No. 2011-12, (July 19, 2011))

Add Sections R108.7 IRC and 108.7 IBC, Re-Inspection Fee(s) as follows:

Re-inspection fees may be assessed for each inspection or re-inspection when the portion of work for which the inspection was scheduled is not complete or when corrections from a previous inspection are not made. Other events which may require the imposition of a re-inspection fee

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are: failure to have the inspection record on the job site when the inspector arrives; the approved plans not on the job site for the inspector to review; and failure to provide access to the job site or area to be reviewed by the inspector. Appeals for such fees are made to the Building and Safety Manager. To obtain a re-inspection after the inspector has left notice that a fee must be assessed; the applicant must pay a \$94.00 fee.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Sections R110.4 IRC and 110.3 IBC, Temporary Occupancy, by adding.

Temporary Certificate of Occupancies for residential construction (detached single family dwellings and duplexes) is not authorized.

Exceptions: (1) When a driveway approach cannot be poured due to weather, then the Building Official can approve a temporary Certificate of Occupancy after the applicant has posted a bond with the City of Flagstaff; (2) If the structure meets all the requirements for habitable space and sanitation, then a Certificate of Occupancy will be granted. Any unfinished items (i.e. extra bonus rooms, basement finishing, etc.,) will be annotated in the inspection record as "not inspected" at the time of Certificate of Occupancy issuance. Applicants moving into a dwelling prior to receiving a Certificate of Occupancy may be evicted as the property is posted "NO OCCUPANCY" by the building inspector or Building Official.

Construction Hours:

Refer to Ordinance 2004-21 of the City Code, Chapter 6-08, Noise Control, Section 6-08-001-0002 for time frames on noise restrictions.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section R112 of the IRC and Section 112 of the IBC, Board of Appeals, by deleting the Sections in their entirety and replacing with:

Board of Appeals, Refer to Ordinance 2011-31 for establishment and requirements of the Board of Appeals.

### **CHAPTERS 2 OF IRC AND IBC, DEFINITIONS**

Amend IBC Section 202 by adding the following definitions:

ACCESSORY DWELLING UNITS. An Accessory Dwelling Unit (ADU) may be either attached or detached and is secondary to the primary residence. The full definitions and application of constructing an ADU is covered under COF Ordinance 2007-20, adopted on 20 March 2007. The ADU is limited in size to be not less than 300 square feet and not greater than 500 square feet in size on lots less than one acre. For lots one acre and larger, the size is limited to 800 square feet maximum. The ADU shall provide complete independent living facilities for one or more

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persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

ACCESSORY ENERGY SYSTEMS. An accessory energy system will include wind turbines, PV solar, thermal solar, geo-thermal, bio-mass and other technologies that provide heating, cooling or electrical energy. The systems will be subject to a building permit and limited by zoning ordinances for visual, design, height and setback requirements.

CITY shall mean the City of Flagstaff.

CONDOMINIUMS. Condominiums are defined in the International Building Code, 2006 Edition as a ~~R~~ R-2 occupancy and will not be reviewed using the 2006 IRC. Condominiums are a collection of individually owned parcels or individual units within a common structure, combined with a joint ownership of commonly used property (sidewalks, hallways, stairs, etc.). The condominium is defined as the ownership of air-space with no ground attached.

INSPECTION is an examination by which a qualified person conducts an investigation of a completed trade, such as framing, electrical, plumbing or mechanical to assure compliance with adopted minimum codes, or to investigate sub-standard housing as defined in the Uniform Housing code, or investigate dangerous conditions as defined per the Uniform Code for the Abatement of Dangerous Buildings.

LADDER BACKING shall mean or refer to wood construction used at perpendicular or angular intersections of non-load bearing walls between stud bays.

STOCKPILING shall mean the same as fill, except that it is assumed to be loose un-compacted material that is placed on a site for a temporary period of time. Stockpiling shall require a grading permit when it exceeds 50 cubic yards and shall not remain on the site for more than six (6) months without written permission from the Building Official or the City Engineer.

TEMPORARY shall mean a period not to exceed six (6) months.

TOWNHOUSES. Attached dwelling units with a legally described property line between units (two or more units; shall be reviewed using the International Residential Code, 2006 Edition, unless approved by the Building Official to be reviewed using the International Building Code, 2006 Edition. Developers must maintain a five (5) foot clearance on townhouse end units between the property line and the face of the structure to allow for openings in the side walls of the individual units. Exceptions would be a recording of a "five (5) foot no-build easement on the Final Plat" or the unit is adjacent to a public right-of-way.

USABLE SPACE. Any space which can be either occupied, used for storage of materials and/or service area which houses mechanical equipment. The space may or may not have environmental conditioning. The usable space will include access corridors, utility closets, mezzanines, basements,

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crawl space storage, attic areas rated for either storage or floor loading, vestibules, and/or storage spaces.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011)

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## CHAPTER 4-02

### INTERNATIONAL RESIDENTIAL CODE

#### Sections:

#### 4-02-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS

#### 4-02-001-0001 Amendments, Additions, and Deletions

The following provisions shall have the effect of either amending, adding to, or deleting from the International Residential Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

#### CHAPTER 3, IRC, BUILDING PLANNING

Revise the amendment to Section R325, Manufactured Housing Design Requirements, as follows:

All new manufactured housing (housing classified as modular, factory built or manufactured house) installed within the City of Flagstaff will be designed to meet HUD minimum standards. The City of Flagstaff enforces a 40 pounds per square foot roof snow load for site built construction. HUD standards for snow winter areas in Arizona is not consistent with local conditions and owners should be aware of the differences.

For "used" manufactured housing or "resale"/relocated manufactured housing being brought into the City of Flagstaff, the following applies. As per direction from the State of Arizona, Office of Manufactured Housing, A.R.S. Title 41, specifically requires that all manufactured housing units be certified to meet the minimum standards of the United States Department of Housing and Urban Development and are to be designed in accordance with consistent State of Arizona Standards for manufactured homes and related industries. An applicant requesting an installation permit and inspection will be required to provide proof to the Building Official of the current State certification or re-certification of the unit.

#### Amend Section R309.5 Fire Sprinklers by deleting entire section.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

#### CHAPTER 4, IRC, FOUNDATIONS

Revise the amendment to Section Amend R401.4.1 as follows:

All new residential subdivisions require a geotechnical soils report be prepared with foundation recommendations. In established areas of the City of Flagstaff, "in-fill" or vacant lots in subdivisions established prior to 1996, the designer may use 1500 pounds per square foot. Where the Building

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Official determines that in-place soils with an allowable bearing capacity of less than 1500 pounds per square foot (psf) are likely to be present at the site, then allowable bearing capacity shall be determined by a geotechnical investigation at the expense of the permit applicant.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

Amend R403.1 by adding:

All footings located less than 18 inches (457 mm) below existing grade to be air entrained, 3,500 psi concrete (severe weather), and pinned to rock at intervals specified for foundation wall vertical reinforcements or as specified by the Arizona design professional.

Revise the amendment to R403.1.1 by deleting the following language:

Spread footings shall be at least 8 inches (204 mm) in thickness. Footing projections, *P*, shall be at least 4 inches (102 mm) and shall not exceed the thickness of the footing.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

Amend R403.1.2 and R403.1.3 by adding:

Add Seismic "C" category to both sections at all seismic D1 and D2 locations.

Amend R403.1.3 by deleting the exception.

Amend Table R403.1 by changing:

All references to 1,500 and 2,000 psf Load Bearing columns shall be changed from 12 inch (305 mm) and 15 inch (383 mm) minimum width of concrete or masonry footings to 16 inch (408 mm) minimum width for one and two story convention light-frame construction and one story under 4-inch brick veneer and 8-inch solid or fully grouted masonry structures.

Delete R403.1.3.1 in its entirety and add the following language to the replacement amendment:

Foundations with stem-walls shall be provided with a minimum of one No. 4 bar at the top of the wall and two No. 4 bar at the bottom of the footings equally spaced.

Exception: Footing designs without reinforcing steel must be "sealed" by a certified or registered Design Professional.

Delete Section R403.3 in its entirety.

Amend R404.1.1; R404.1.2; R404.1.4, R404.1.8 by adding:

Add Seismic Design Category "C" to all references of D1 and D2.



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## **TITLE 4, BUILDING CODE**

Amend R404.1.4, Number 1 by deleting "in the upper 12 inches of the wall" and adding:

1. Minimum reinforcement shall consist of one No. 4 horizontal rebar located at top of wall not more than 5 inches (128 mm) below the finished concrete and at the top course of concrete masonry unit walls within close proximity to the anchor bolts.

Amend R404.1.4, second paragraph by changing:

Change the vertical reinforcement bar reference from #3 rebar to #4 rebar.

Amend R407.3 Exception by deleting:

Delete Seismic Design Category "C" from this exception.

### **CHAPTER 6, IRC, WALL CONSTRUCTION**

**Amend R602.5** by adding:

Ladder backing shall be spaced a maximum 8 inches (204 mm) on center.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

### **CHAPTER 9, IRC, ROOF ASSEMBLIES**

Revise the amendment to Section R904.2 as follows:

All roofing materials used must be a class "A" or "B" and rolled roofing is to be a Class A or B material and shall be a self-adhering, polymer modified bitumen material.

(Amended Ord. No. 2011-12, (July 19, 2011))

Delete Sections R905.7 and R905.8 in their entirety.

### **CHAPTER 11, IRC, ENERGY EFFICIENCY**

Amend Section 1102.1 by adding:

Section N1102.1.1. Insulation values in 2x6 wall construction will remain the same at R-19. Insulation values in 2x4 wall construction will remain at R-15 (high density). Construction using Structural Insulated Panels (SIPS) and/or straw bail in-fill methods will be a minimum of R-21 (industry standards often show results of R-30 to R-45 depending upon materials and thickness of the wall).

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section N1102.1.2 by adding:

## **2011~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

Section N1102.1.2.1. All new construction and replacement windows to have National Fenestration Rating Council (NFRC) total unit U-factor of 0.45 or less. Windows shall also be low-E where practical (not recommended for southern exposures) or not being used for solar heat gain to fuel a solar massing device.

(Amended Ord. No. 2011-12, (July 19, 2011))

Amend Section N1103 by adding:

Section N1103.7 Furnaces: All furnaces installed in new construction shall be 90% condensing type furnaces.

Exception: Replacement furnaces are to be voluntary 90% condensing type furnaces.

(Amended Ord. No. 2011-12, (July 19, 2011))

~~Amend Chapter 11 by adding the following sections:~~

~~Section N1104.1. Water heaters must be insulated using exterior "jackets" or for "Energy Star" or energy conservation rated appliances. The insulation information must be available on the appliance installed at the time of final inspection. A minimum total insulation value of R-16 must be achieved. This applies to new installation or replacements.~~

~~Exception: The R-16 is not required for the water heater when the existing room size prohibits the larger sized water heater and when the manufacturer's listing prohibits the use of insulation jackets.~~

~~Section N1104.2. A carbon monoxide (CO) detector will be installed at the house/garage entry door and/or within each utility room where combustion appliances are used (sealed combustion appliances are exempt). A laundry room which uses gas appliances would require a detector.~~

~~Section N1104.3. All hot water supply lines (both ½" and ¾") will be insulated with a minimum of R3.6 wrap insulation or ½" foam covers. All joints between sections of insulation will be snugly butted together and wrapped with duct tape.~~

~~Section N1104.4. All new construction and replacement heating units (optional for hydronic in-floor heating systems) will have programmable thermostats.~~

~~Section N1104.5. All newly installed toilets must be "high efficiency toilets (HET)" units which have a maximum of 1.3 gallons for solids. (Special attention to this change needs to be addressed by suppliers and home improvement centers which stock the older style units).~~

~~Section N1104.6. A construction waste reduction/reuse plan will be written and provided at the time of building permit submittal for new construction of all new commercial projects (apartments and condominiums), townhouse subdivisions and or single family detached builders who submit for more than 15 permits within a subdivision during any one calendar year. The~~

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~~plan must address construction waste to include cardboard, drywall, foam, metal, concrete, masonry and asphalt.~~

~~Section N1104.7. All appliances, refrigerators, freezers, washers, dryers, cook stoves, that are supplied by the contractor shall be Energy Star rated.~~

(Amended Ord. No. 2011-12, (July 19, 2011))

~~Amend Chapter 11 as follows~~

~~Section N1105, Voluntary Best Practices~~

~~Section N1105.1: Future Solar Water Heater. All new residential construction shall be built so as to accommodate a future installation of a solar water tank. Ceilings within the water heater compartment shall be a minimum 8 foot in height. Either insulated plumbing for standard inter-connect to a roof mounted system will be pre-plumbed or adequately sized chase/access panel provided between the water heater compartment and the attic space will be installed.~~

~~Exception: Single story single family dwellings.~~

~~Section N1105.2: Future Solar Photovoltaic. All new residential construction shall be supplied with a minimum ¾ inch electrical conduit, with a pull wire, for the future installation of a solar photovoltaic system. The conduit shall be run from the inside of an accessible attic crawl space to the electrical service entrance section.~~

~~Section N1105.3: Future Alternative Energy Systems. (Wind Turbines or geothermal): Working drawings prepared by the owner builder, contractor, draftsman or design professional should indicate possible location of expansion to accept alternative energy systems. This can be demonstrated by indicating location of future accessory service panels for electrical systems or expansion capability of mechanical rooms for boilers and control systems.~~

~~Section N1105.4: Voluntary Sustainability Programs. This allows the voluntary use of LEED, Coconino county sustainable checklist, National Green Building Standard, NAHB 2008, ICC 700-2008. This allows the builder or property owner to participate in sustainable programs that are not listed in the International Energy Conservation Code, 2009 edition.~~

~~Section N1105.5: Jump Ducts. Provide an air balancing device between adjoining rooms to allow equalization of air pressure and temperatures between rooms.~~

~~Section N1105.6: Exterior Wall Insulation. Contractor to increase R-19 to R-24 insulation using high density or spray applied foam insulation in exterior framed walls.~~

~~Section N1105.7: Protection of cold water supply lines. Add R-19 insulation to water supply lines that are exposed in crawl spaces.~~

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~~Section N1105.6: At the time of final inspection, the builder, contractor, or owner may install compact fluorescent lights (CFLs), other fluorescent, LEDs or other energy efficient lighting equivalent to or better than fluorescents in the high use areas for new construction. High use areas are typically defined as kitchens, living room, family room, and dining area. Specialty type lighting fixtures shall be of a low wattage or low voltage type.~~

~~Exception: Specialty lighting (chandeliers and under counter halogen lights) may be used in living rooms, dining rooms and kitchens. Recessed spot lights will use CFL's or LED's and reostats must be rated for their use.~~

~~Section N1105.7 Wood floors in new construction may have an insulation value of R-30.~~

~~Section N1105.8 Insulation in contact with the ground may be extruded polystyrene or other foam products other than expanded polystyrene.~~

~~Section N1105.9 Hot water re-circulating pumps are to have a programmable timer, an on/off switch, and ¾ inch foam pipe insulation.~~

Section N1105.10 Dual Plumbing. All new residential single family detached units are "voluntarily" requested to install the piping only for dual plumbed for "gray water" disposal and conservation efforts. Access for future valving must be provided. The initial installation will be connected to sanitary sewer. The piping shall be installed in accordance Appendix C, Gray Water Recycling Systems, of the International Plumbing Code, 2009 Edition, and the regulations established by ADEQ. Reference Type 1 General Permit Best Management Practices for the 13 points of using gray water, at [www.adeq.state.az.us](http://www.adeq.state.az.us) or call at 1-800-234-5677.)

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

### CHAPTER 13 IRC, GENERAL MECHANICAL

Revise the amendments to Section M1305.1.4.3 by adding the following language:

"Furnaces are to be hard-wired (no cord & cap unless specifically supplied by the manufacturer) with a 20 ampere motor rated disconnect within sight of the furnace."

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

Revise the amendment to Section M1307.3.1 to read:

See G2408.3 for appliance protection.

Amend Section 1507.1 by deleting "or whole-house mechanical ventilation," from the first sentence.

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Amend Section 1507.3 Whole-house mechanical ventilation system by deleting in its entirety.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

## **CHAPTER 24, IRC, FUEL GAS**

Amend Section G2406.2 by deleting numbers 3 and 4.

Change the amendment to Section G2408.3 to read as follows:

Appliances shall not be located in a location where subject to mechanical damage unless protected by approved barriers such as steel bollards filled with concrete, poured in place concrete curb, or installed wheel stops, or on a platform with a minimum clearance of 24 inches (460 mm) above the floor. Appliances not subject to mechanical damage shall be installed per Section 305.3. The exception is deleted in its entirety.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

Change the amendments to Sections G2417.4.1 and G2417.4.2 by making the following revisions:

The test pressure shall be 10 psi (or half the maximum of the gauge) for a period of 15 minutes. Gauges shall be of 1/10 pound increments or less and shall have a pressure range no greater than twice the test pressure.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

In Section G2439.4 (614.5), Makeup Air, change the amendment to read as follows:

Installations exhausting more than 200 cfm (0.09 m<sup>3</sup>/s) shall be provided with makeup air. (Amended Ord. No. 2011-12, (July 19, 2011))

## **CHAPTER 26, IRC, GENERAL PLUMBING REQUIREMENTS**

Revise the amendment to Section P2603.6.1 to read as follows:

Building sewers that connect to private sewage disposal systems must be approved by the Coconino County Environmental Health Department Building sewers for single family detached buildings shall be a minimum of ~~12~~<sup>8</sup> inches (306 mm) below grade.

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011))

## **CHAPTER 29, IRC, WATER SUPPLY AND DISTRIBUTION**

Amend Section P2303.5.1, by deleting the words "other than plastic," in the

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first sentence.

Amend Section P2904, Dwelling Unit Fire Sprinkler Systems by deleting section in its entirety

## CHAPTER 31, IRC, VENTS

Revise the amendment to Section P3101.1, Roof Extension, to read as follows:

Add "12 inches (306 mm) above the roof."

(Amended, Ord. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, (July 19, 2011)

## INTERNATIONAL RESIDENTIAL CODES (IRC), 2006 EDITION, PART X - APPENDICES

Revise the amendments to Part X - Appendices as follows:

APPENDIX F - Radon Control Methods

APPENDIX G - Swimming Pools, Spas and Hot Tubs

APPENDIX H - Patio Covers

APPENDIX J - Existing Buildings and Structures.

APPENDIX M - Home Day Care, R-3 Occupancy (a home occupation permit is required prior to receiving any building permits for conversions or improvements).

APPENDIX O - Gray Water Recycling Systems (cross reference to Chapter 11 and timing for implementation. Applicant must also meet the requirements of ADEQ if systems are larger than what the State of Arizona allows).

### APPENDIX R - Straw Bale construction guide for residential use.

#### Section AR101 TITLE, SCOPE and PURPOSE

**AR101.1 Title.** These provisions shall be known as the City of Flagstaff Straw Bale Construction Code.

**AR101.2 Scope.** This appendix shall govern the use of baled straw as a building material, and shall apply to Group R occupancies, Group U occupancies and other occupancies when secondary and appurtenant to Group R or Group U occupancies. Unless stated otherwise in this appendix, all other provisions in this code shall apply to structures using baled straw as a building material.

**AR101.3 Purpose.** The purpose of this appendix is to provide minimum requirements specific to an alternative building materials, reference Section R104.11 and associated testing in Section R104.11.1 Tests, with

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regards to using straw bale as a building material. With the provisions of this appendix, straw bales may be used as a structural or non-structural material. Structural uses include elements designed to support gravity loads, and elements design to resist in-plane wind and seismic loads. Non-structural uses include, but are not limited to, infill walls, insulation, landscape walls and benches.

**AR101.3.1** Current test studies done Bou-Ali, Ghailene (1993), University of Arizona, Tucson; Ruppert, Grandsaet (1999), University of Colorado, Boulder; show that structurally bearing elements of straw bale are limited to between 300 - 800 pounds per linear foot depending upon the wall plaster used. The CBC also limits the walls to 20 PSF snow live loads.

**AR101.3.2.** For Flagstaff, with a 40 PSF snow load, the bearing capacity shall be limited to 150 - 400 pounds per linear foot. No floor loading will be allowed on straw bale walls without structural engineering.

**AR101.3.3.** Trusses roof spans are limited to fifteen (15) feet in width and top plates and anchoring for uplift must be provided. All other spans or sections of a house which would be two story or more must us a structural "space" frame or post and beam method. In these designs, the straw bale is being used as infill for insulation value.

### Section AR102 DEFINITIONS

**AR102.1 General.** The following words and terms shall, for the purposes of this appendix, have the meanings shown here. Refer to Chapter 2 for general definitions used elsewhere in the International Residential Code.

**Bale.** Equivalent to "straw bale" for the purposes of this appendix.

**Bending.** A moment (force) acting on a body will induce bending stress.

**Bond.** The measure of adhesion; i.e., the bond of concrete or stabilized earth to reinforcing bars and anchor bolts.

**Bond Beam.** A structural element within a wall (usually at the top) intended to stabilize the wall and facilitate the transfer of loads from above.

**Buckling.** The collapse of a wall or column by bending and breaking under a vertical load.

**Flake.** A slab or straw removed from an untied bale. In particular, an intact slab (3-5" thick) as created by the baling machine.

**Laid flat.** Stacking bales so the sides and the largest area are horizontal and the longest dimension of this area is parallel with the wall plane.

**Laid On-Edge.** Stacking bales so the sides with the largest area are vertical and the longest dimension of this area is horizontal and parallel with the wall plane.

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**Mesh.** An openwork fabric of linked strands of metal, plastic or natural fiber, embedded in plaster to provide tensile reinforcement and/or bonding. (also sometimes lath).

**Moisture Barrier.** A continuous barrier capable of stopping the passage of water.

**Non-Load-bearing.** (See Non-Structural.)

**Non-Structural.** A straw bale wall or other element which supports only its own weight, and may resist out-of-plane lateral loads.

**Pins.** Metal rod, wooden dowel or bamboo driven into or secured on the surface of stacked bales for purposes of connection or stability.

**Plaster.** Gypsum, lime, lime-Cement, or cement plasters, as defined by the code and Section AR106 of this appendix, or clay plaster and earth-cement plaster as defined in Section AR106.9 and AR106.10.

**Running Bond.** The placement of straw bales such that the head joints in successive courses are offset at least one quarter of the bale length below.

**Skin.** The compilation of plaster and reinforcing, if any, on the surface of stacked bales.

**Structural.** A straw bale wall or other element which support gravity loads (dead and live) and/or resists in-plane lateral loads.

**Stack Bond.** The placement of straw bales such that head joints in successive courses are vertically aligned (similar to the "soldier" courses in masonry construction).

**Straw.** The dry stems of cereal grains left after the seed heads have been substantially removed.

**Straw Bale.** A rectangular compressed block of straw, bound by polypropylene strings or baling wire.

**Straw-bale.** The adjective form of straw bale.

**Straw-clay.** A mix of loose straw and clay binder.

**Three-String Bale.** A straw bale bound by three strings or wires. Typically with approximate dimensions of 15"x23"x42" to 48" long.

**Truth Window.** An area of a straw-bale wall left without its finish, to allow view of the straw otherwise concealed by its finish.

**Two-String Bale.** A Straw bale bound by two strings or wires. Typically with approximate dimensions of 16" or 14" x 18" x 36" to 45" long.

**Vapor-Permeable Membrane.** A material or covering having a permeance rating of five (5) perms or greater, when testing in accordance with the



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desiccant method using Procedure A of ASTM E96. A vapor-permeable material permits the passage of moisture. (This definition is shown for convenience and is identical to that shown in Chapter 2, 2006 IBC.)

**Vapor Retarder.** A vapor-resistant material, membrane or covering such as foil, plastic sheeting or insulation facing having a permeance rating of one (1) perm or less, when tested in accordance with the desiccant method using Procedure A or ASTM E96. Vapor retarders limit the amount of moisture vapor that passes through material or wall assembly. (This definition is shown for convenience and is identical to that shown in Chapter 2, 2006 IBC.)

### Section AR103 BALES

**AR103.1. Bales Shall Be Rectangular In Shape.** The use of non-rectangular bales, such as circular bales, shall not be used in structural applications.

**AR103.2 Size.** Bales used with a continuous wall shall be of consistent height and width to ensure even distribution of loads with the wall system.

**AR103.3 Ties.** Bales shall be bound with ties of polypropylene string or baling wire. Bales with broken or loose ties shall be firmly retied. A visual check by the assigned field inspector of materials delivered to the job site will be done prior to assembly of bale walls.

**AR103.4 Moisture Content.** The moisture content of bales, at the time of procurement and at the time of application of the first coat of plaster or installation of another weather protective finish, shall not exceed nineteen (19%) percent of the total weight of the bale (ideal moisture content would be the same as kiln dried wood, between 15-17%). The moisture content of bales shall be determined by use of a moisture meter designed for use with baled straw or hay, equipped with a probe of sufficient length to reach the center of the bale. A minimum of five bales, selected by the inspector at random will be tested.

**AR103.5 Density.** Bales shall have a minimum dry density of 6 pounds per cubic foot. The dry density shall be determined by reducing the actual bale weight by the weight of the moisture content in pounds, and dividing by the volume of the bale in cubic feet. At least five bales and not less than two (2) percent, randomly selected from the bales to be used, may be tested to determine if all of the bales for the building are of acceptable density. This inspection will be done at the same time as the moisture content is done. If equipment is not available, then the builder may elect to use a third party or special inspection to perform the testing.

**AR103.6 Partial Bales.** Custom-made partial bales shall be firmly retied and where possible, use the same number of ties as the standard size bales.

**AR103.7 Types of Straw.** Bales of various types of straw, including wheat, rice, rye, barley, oat and similar grain plants, shall be acceptable if they meet the minimum requirements of this Section for

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density, shape, moisture content and ties. Bales of hay and other grasses containing seed shall not be used as a building material. When securing materials from a supplier, it is practical to remember that straw is for building and hay is for food.

**AR103.8 Protection of Bales Prior To Installation.** The builder must store the bales in such a manner as to protect them from weather and other sources of moisture damage. Storing bales in direct contact with the earth or uncovered during inclement weather will be subject to rejection by the building inspector.

**AR103.9 Unacceptable Bales.** Bales which show signs of damage due to moisture, including but not limited to mold or fungus growth or associated discoloration, even if they are of an acceptable moisture content and density, shall not be used. The builder must inspect all deliveries and protect the bales prior to the installation in the wall frames.

**AR103.10 Wall Thickness.** Nominal minimum bale wall thickness shall be fourteen (14") inches or greater.

### **Section AR104 MOISTURE**

**AR104.1 General.** All weather-exposed bale walls, other weather-exposed bale elements and bale walls enclosing showers or steam rooms shall be protected from water damage.

**AR104.2 MOISTURE CONTENT of BALES** (See definitions, Section AR103.4).

**AR104.3 Moisture Barriers and Vapor Retarders.** Plastered bale walls may be constructed without any membrane barrier between straw and plaster, except as required elsewhere in this appendix. This is allowed to facilitate transpiration of moisture from the bales and to secure a structural bond between straw and plaster. No vapor permeance rating of less than 5 perms, except as permitted elsewhere in this appendix, or as demonstrated to be necessary by a design professional of record (this must be an Arizona Registered Architect or Engineer in accordance with ARS 32-121) shall be used.

**AR104.4 Horizontal Surfaces.** Bale walls and other bale elements shall have a moisture barrier at all horizontal surfaces exposed to the weather. This moisture barrier shall be of a material and installation that will prevent water from entering the wall system or other bale elements.

**AR104.4.1** These horizontal surfaces include, but are not limited to exterior window sills, sills at exterior niches, bale vaults and arches, tops of landscape walls and weather-exposed benches.

**AR104.4.2** The finish material at all "horizontal" surfaces shall be sloped a minimum of one inch per foot (8%) and shall drain beyond and away from all bale walls or bale elements. If the moisture barrier is below the finish material, it shall be sloped a minimum of one inch per foot (8%) and shall drain beyond the outside vertical surface of the bale's vertical finish.

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**AR104.4.3** In areas where snow may collect, the moisture barrier and/or flashing element may have to be extended upwards on the vertical surface to prevent damage to the bale(s).

**AR104.5 Parapets - Prohibited Construction.** Parapets made of straw bales are prohibited. The roof over-hang must always extend over the top of the straw bale walls.

**AR104.6 Bale/Concrete Separation.** There shall be a moisture barrier and a capillary break between bales and support concrete. The moisture barrier may be of any durable sheet or liquid applied membrane that is impervious to water. The capillary break may be any material that prevents the "wicking" of moisture across the material and into the bale(s). Where bales abut a concrete or masonry wall that retains earth, there shall be a moisture barrier between the wall and the bales.

**AR104.7 No Plumbing Trees Will Be Allowed in Straw Bale Walls.** Conventional framed walls will be provided. Plumbing will not be installed in interior non-load bearing straw bale walls. The use of wood framed "false" walls or furred out sections in front of walls will be allowed.

**AR104.7.1 Exception:** Hose bibs will be allowed to penetrate a straw bale exterior wall as long as the plumbing is sleeved and the bib/sleeve extends a minimum of six (6") inches beyond the exterior/interior surfaces of the wall.

### Section AR105 STRUCTURAL USE OF STRAWBALE

**AR105.1 Scope.** Buildings constructed with straw bales shall comply with this Section, and with all other structural provisions of the International Residential Code, 2006 Edition, Chapters 4, 5, 6 (as it pertains to those areas of a straw bale structure which is conventionally framed) and 8, unless stated otherwise in this appendix. The design considerations for Flagstaff, Arizona is found in Table R301.2(1) as amended in Title 4, City Codes, City of Flagstaff 2011 Building Code Amendments.,

**AR105.1.1 Energy Considerations.** The use of straw bale construction may enable the builder to meet or surpass many of the requirements of the International Energy Conservation Code (IECC).

**AR105.2 General.** Straw bale buildings may use any type of structural system allowed by this code and this appendix.

**AR105.3 Foundations.** Foundations for straw bale walls and other straw bale elements may be of any foundation type permitted by this code and amendments thereto. The frost depth requirements remain the same at 30" below finished grade. The amount of steel will remain the same at two (2), #4 rebar laid continuously at the bottom of the footing (three inches above the bottom of the footing). The straw bales may not be buried below finished grade and the first row must be placed a minimum of six (6) inches above the finished grade on a concrete slab (see detail).

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**AR105.4. Alternative Foundations.** Alternate foundations and foundation systems may be used if designed by an Arizona Registered design professional (Architect or Engineer).

**AR105.6 Configuration of Bales.** Bales may be laid flat or on-edge as limited in height by AR105.5. Bales in walls with reinforced plasters may be a running or stack bond. Bales in walls with un-reinforced plaster shall be in a running bond only.

**AR105.7 Pre-Compression of Straw bale Walls.**

**AR105.7.1** When not required:

**AR105.7.1.1.** For non-structural walls

AR105.7.1.2. For walls designed or allowed to resist lateral forces only.

**AR105.7.1.3.** For walls bearing gravity roof loads, when the full dead load of the roof is imposed and remains on the wall for at least 28 days before plastering. No design snow load greater than 40 psf is allowed (see restrictions on spans in Section AR101.3.3). No floor loads may be supported by walls which are not pre-compressed.

**AR105.7.2** When required. All walls bearing gravity loads, which are not described in AR105.6.1, shall be pre-compressed to a force equal to or greater than the design loads on the wall.

**AR105.8 Voids and Stuffing.** Voids in the field of structural straw bale walls shall be limited to six (6) inches in width and shall be firmly stuffed with flakes of straw or with straw-clay, before the application of plaster.

**AR105.9 PLASTER SKINS.**

**AR105.9.1 General.** Plaster skins on structural walls may be of any type allowed in Section AR106, except gypsum plaster, and shall also be limited by Table AR105-A and Table AR105-B.

**AR105.9.2 Straightness.** On structural walls (load bearing), plaster skins shall be straight as a function of the bale wall surface they are applied to as follows:

**AR105.9.2.1.** Across the face of the bale - straw bulges shall not protrude more than  $\frac{3}{4}$ " across two feet of its height or length.

**AR105.9.2.2** Across the face of a bale wall - straw bulges shall not protrude from the vertical plane of the bale wall more than 2-1/2" over eight (8) feet.

**AR105.9.2.3** Offset of bales - the vertical face of adjacent bales may not be offset more than  $\frac{3}{4}$ ".

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**AR105.9.3 Plaster and Membranes.** Structural bale walls shall have no membrane between straw and plaster; or shall have sufficient attachment through the bale wall from one plaster skin to the other as designed by an Arizona Registered design professional (Architect or Engineer). See sections AR106.5 and AR106.6.

**AR105.10 Transfer of Loads into Plaster Skins.** When plastered straw bale walls are used to bear gravity and/or lateral loads, such loads shall be transferred into the plaster skins by direct bearing or by other adequate transfer mechanism (alternatives must be provided to the Building Official for approval).

### **AR105.11 SUPPORT of PLASTER SKINS.**

**AR105.11.1 For Structural Walls.** Plaster skins for structural straw-bale walls shall be continuously supported along their bottom edge to allow a load path into the foundation system. Acceptable supports include, but are not limited to: concrete or masonry footings, concrete slab, wood framed flooring which is adequately blocked for the width of the imposing load, wood beam or steel angle adequately anchored for the imposed weight of the plaster skin.

**AR105.11.2 For Non-Structural Walls.** Plaster skins for non-structural walls need not to be supported along their bottom edge. Maximum length of walls without cross bracing (either straw bale or conventional framing is twenty (20) feet.

TABLE AR105-A  
Allowable gravity Loads (pounds per foot)  
for plastered Straw bale walls (18-23" width)

WALL PLASTER <sup>a</sup>	SILL PLATES <sup>bc</sup>	Anchor, Bolts or Other Sill Fastening <sup>c</sup>	Mesh <sup>d</sup>	Staples	Allowable Bearing Capacity <sup>h</sup>
A. Clay	c	c	None P	None P	300
B. Soil-Cement <sup>k</sup>	c	c	d	e, f, g	800
C. Lime	c	c	d	e, f, g	450
D. Cement-line	c	c	d	e, f, g	800
E. Portland Cement <sup>i</sup>	c	c	d	e, f, g	800

<sup>a</sup> Plasters shall conform with AR106.9 through AR106.11.2.3 for makeup and thickness with AR10.92 for straightness and with AR105.11.1 and AR105.11.2 for support of plaster skins.

<sup>b</sup> Sill plates shall support and be flush with each face of the bale wall.

<sup>c</sup> For walls supporting gravity loads only (or for non-structural walls), use sill plates and fasteners as required for framed walls in 2308.2 and 2308.3. See table AR 105-B for requirements for shear walls and braced panel walls.

<sup>d</sup> May be any metal mesh allowed by this code and must be installed throughout the plaster with minimum four (4") inch laps. Fasten with

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staples per footnote "e". Staples shall be at maximum spacing of two (2") inches o.c. to roof or floor bearing assembly, or as shown necessary to

transfer loads into the plaster skins per AR105.10 and at a maximum spacing of four (4") inches o.c. to sill plates.

<sup>e</sup> Staples shall be gun staples (stainless steel or electro-galvanized, 16 gauge with 1-1/4" legs, 7/16" crown) or manually driven staples (galvanized 15 gauge with 7/8" legs, 3/16" inner spread and rounded shoulder). Other staples may be used as designed by an Arizona Registered design professional.

<sup>f</sup> Staples shall be firmly driven, diagonally across mesh intersections at spacing indicated. For walls with a different plaster on each side, use the lower value.

<sup>g</sup> For walls with a different plaster on each side, use the lower value.

<sup>i</sup> Minimum 1-1/2" thickness. Building Official may require a compression test to demonstrate a minimum 100 psi compressive strength.

<sup>i</sup> Except as necessary to transfer roof or floor loads into the plaster skins per AR105.10.

<sup>j</sup> Minimum 1-1/2" thickness. Building official may require a compression test to demonstrate a minimum 1000 psi compressive strength.

<sup>k</sup> Containing lime as described in AR106.11

**Table AR105-B  
Allowable Shear (pounds per foot) for Plastered straw bale walls  
(18" and 23" inch thick)**

Wall	Plaster <sup>a</sup> (both sides)	Sill Plates <sup>b</sup>	Anchor <sup>c</sup> Bolts (on center)	Mesh <sup>d</sup>	Staples <sup>e,g</sup> (on center)	Allowable Shear <sup>h,i</sup>
A1	Clay <sup>i</sup>	2x4	2'8"	None	None	100
A2	Clay <sup>i</sup>	2x4	2'8"	3"x3" knotted hemp	3"	120
A3	Clay <sup>g</sup>	4x4	2'0"	2"x2" high-density polypropylene	2"	180
B	soil-cement <sup>i</sup>	4x4	2'0"	2"x2" 14 ga <sup>k</sup>	2"	300
C1	lime	2x4	2'8"	17 ga. Woven wire	2"	200
C2	lime	4x4	2'0"	2"x2" 14 ga <sup>k</sup>	2"	250
D1	cement-lime	4x4	2'8"	17 ga. Woven wire	2"	400
D2	cement-lime	4x4	2'0"	2"x2" 14 ga <sup>k</sup>	2"	450

<sup>a</sup> Plasters shall conform with AR106.9 through AR106.11.2.3 for makeup and thickness, with AR105.9.2 for straightness and with AR105.11 for support of plaster skins.

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<sup>b</sup> Sill plates shall be pressure treated or foundation red wood.

<sup>c</sup> Anchor bolts shall be ½" diameter with washers with a minimum seven (7") inch embedment in the concrete foundation.

**AR105.11.2** Resistance to out-of-plane lateral loads. Plastered straw bale walls are capable of withstanding out-of-plane design loads prescribed in this code with the following limitations:

**AR105.11.2.1.** Walls with reinforced plasters shall be limited by a 6:1 ratio of stacked bale height to bale width per AR105.5 (this limits the 23 inch wide bale to 11'-6" in height and 18" inch wide bales to 9' in height).

**AR105.11.2.2** Walls with un-reinforced plasters shall be limited by a 4:1 ratio of stacked bale height to bale width (this limits the 23 inch wide bale to 7'-8" and the 18" inch wide bales to 6' in height). Walls may not be built using the overall length of the bale (often 36 to 48" in length to increase the height). An exception can be made for custom made bales is the ratios of height, width and length are maintained. Regardless, no straw bale walls will be allowed to be greater than fourteen (14') feet in height without (1) being engineered by an Arizona Registered design professional or (2) being part of a post and beam structure in which the straw bales are only used as in-fill.

**AR105.11.2.3** Wall with un-reinforced plasters or no~~t~~ plaster, and with internal or external pins, shall be limited by a 6:1 ratio of stacked bale height to bale width. Pins may be ½" diameter steel (# 4 rebar), wood or bamboo. Internal pins shall be installed vertically at a maximum of two (2') foot spacing into the bales from the top course to bottom course, with the bottom course being connected to its support similarly with pins or other approved means. Pins may be continuous or may overlap through one bale course. External pins shall have full lateral bearing on the sill plate and the roof or floor bearing member and shall be tightly tied though the wall to an opposing pin with polypropylene string or bailing wire at a thirty (30") inch maximum spacing.

### **AR105.11.3 PRESCRIPTIVE DESIGN USING STRUCTURAL STRAW BALE WALLS.**

**AR105.11.3.1 General.** Plastered straw bale walls may be used structurally, without design by an Arizona design professional (Architect or Engineer), as described in this subsection. Such walls shall also comply with AR105.5 through AR 105.11.2.3 of this Section and shall comply with other Sections of this appendix as applicable.

**AR105.11.3.2 Load and Other Limitations.** As described in 2308.2-3 through 7, and 2308.2.2.

**AR105.11.3.3 Gravity Load Bearing Walls.** Limited to wall types B, C, D and E, shown in Table AR105-A. Type A walls may be used if they are demonstrated to support design loads no greater than the allowable load.

**AR105.3.4 Braced panels.** Straw bale shear walls may be used as braced panels per the requirements and limitations in IBC Section 2308.9.3

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Bracing, and per IBC Section 2308.12. Additional requirements for conventional construction in Seismic Design Category C. Straw bale shear wall types B, C, D and E shown in Table AR105-B may be used in situations where braced wall panel types 2, 3, 4, 6 and 7 are allowed. Straw bale shear wall type A may be used in situations where braced wall panels types 1 and 5 are allowed.

**AR105.12 Connection of Framed Walls to Straw bale Walls.** Framed walls perpendicular to or at an angle to a straw bale wall assembly, need only be fastened to the bottom and top wood members of the straw bale wall per framing connections permissible in this code. Where such connection is not possible, the abutting stud shall be connected to alternating straw bale courses with a ½" diameter steel (#4 rebar), wood or bamboo dowel with minimum of eight (8") penetration into the straw bale.

**AR105.13 Alternate Performance Design Criteria** (must provide structural calculations and be stamped by an Arizona Registered design professional). When plastered straw bale walls or other elements are engineered, they may use the model of retained, thin shell, reinforced concrete, as in the American Concrete Institute's ACI-318 Manual. This model may be used for all reinforced plasters, including those without cement. Such design and analysis shall be made in accordance with the following:

**AR105.13.1 General.** Straw bale structural systems and elements shall be designed using engineering principles, fundamental engineering behavior and principles of mechanics.

**AR105.13.2 Rationality.** Straw bale structural elements shall be designed based on a rational analysis in accordance with established principles of mechanics. These elements shall provide a complete load path capable of transferring all loads and forces from their point of origin to the load-resisting elements based on a rational connection of components.

**AR105.13.3 System Characteristics.** Strength, stiffness and toughness (ductility) characteristics of the bales and their skins shall be considered in the design of the system.

### Section AR 106 FINISHES

**AR106.1 General.** Finishes applied to straw bale walls may be of any type permitted by this code and shall comply with this Section and the provisions of Chapter 14 (Exterior Walls, 2006 IBC) and Chapter 25 (Gypsum Board and Plaster, 2006 IBC) unless stated otherwise in this Section.

**AR106.2 Purpose and Where Required.** Straw bale walls and other straw bale elements shall be finished so as to provide mechanical and fire protection of the bales, restrict the passage of air through the bales and to protect them from weather.

**AR106.3 Vapor Retarders.** No vapor retarder may be used on a bale wall, nor shall any other materials be used which has a vapor permeance rating of less than 5 perms; except as permitted elsewhere in this appendix or



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as demonstrated to be necessary by an Arizona Registered design professional (Architect or Engineer).

**AR106.4 Plaster.** Plaster applied to bales may be of any type described in this section.

**AR106.5 Plaster and Membranes.** Plaster may be applied directly to straw bale walls and other straw bale elements, in order to facilitate transpiration of moisture from the bales and to secure a mechanical bond between the skin and the bales; except where a membrane is allowed or required elsewhere in this appendix. Structural bale walls shall have no membrane between straw and plaster or shall have sufficient attachment through the bale wall from one plaster skin to the other, as designed by an Arizona Registered design professional (Architect or Engineer).

**AR106.6 Lath and Mesh for Plaster.** In straw bale construction the surface of the straw bales functions as lath and no other lath or mesh is necessary; except as required for tensile strength of the plaster and/or wall assembly in particular structural applications (see AR105). Straw bales laid flat or on-edge provide a sufficient mechanical bonding surface between plaster and straw.

**AR106.7 Plaster on Non-Structural Walls.** Plaster on walls that do not carry gravity loads and are not designed to resist in-plane lateral forces, may be any plaster as described in this Section.

**AR106.8 Plaster on Structural Walls.** Plaster on structural walls shall comply with AR105.9 through AR105.11. Plaster on walls that carry gravity loads shall comply with Table AR105-A. Plaster on walls designed to resist in-plane lateral forces, shall comply with Table AR105-B.

**AR106.9 Clay Plaster** (Also known commonly as earth or earthen plaster).

**AR106.9.1 General.** Clay plaster is any plaster whose binder is comprised primarily of clay. Clay plasters may also contain sand or other inert granular material and may contain reinforcing fibers. Acceptable reinforcing fibers include, but are not limited to, chopped straw, hemp fiber, nylon fiber and animal hair.

**AR106.9.2 Mesh.** Clay plaster may have no mesh.

**Exception:** A natural fiber mesh, corrosion-resistant metal mesh or high-density polypropylene mesh may be used.

**AR106.9.3 Thickness.** Clay plaster shall be a minimum one (1") inch thick, unless required to be thicker for structural or fire-resistance as described in this appendix.

**AR106.9.4 Rain-Exposed.** Clay plaster, where exposed to rain (snow) shall be finished with lime plaster or other erosion resistant finish.

**AR106.9.5 Prohibited Finish Coat.** Cement plaster and cement-lime plaster are prohibited as a finish coat over clay plasters.

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**AR106.9.6 Additives.** Additives may be used to increase the plasters workability, durability, strength or water resistance.

**AR106.9.7 Separation of Wood and Clay Plaster.** No separation or moisture barrier is required between untreated wood and clay plaster. (Wood, earth and foundation separation requirements are still enforced and covered in Section R319 and R403 of 2006 IRC).

**AR106.10 Earth-Cement Plaster** (also know commonly as soil-cement, stabilized earth or pise').

**AR106.10.1 General.** Earth-cement plaster is comprised of earth (free or organic matter), Portland cement and may include sand or other inert granular material. May contain reinforcing fibers.

**AR106.10.2 Mesh.** Earth-cement plaster shall use any corrosive-resistant metal mesh permitted by this code and as described in Section AR105 if used on a structural wall.

**AR106.10.3 Thickness.** Earth-cement plaster shall be a minimum of 1-1/2" thick.

**AR106.11 Gypsum Plaster.**

**AR106.11.1 General.** Gypsum plaster shall comply with Section 2511 of the 2006 IBC.

**AR106.11.2 Restriction of Use.** Gypsum plaster is limited to use on interior surfaces and on non-structural walls, except as a finish coat over an allowed structural plaster.

**AR106.12 Lime Plaster.**

**AR106.12.1 General.** Lime plaster is any plaster whose binder is comprised primarily of calcium hydroxide (CaOH). This includes Type N or Type S hydrated lime, natural hydraulic lime or quicklime. Lime plasters shall comply with ASTM Standards C5 and C206. The plaster may be applied in two coats, provided that the combined thickness is a least 7/8" thick and each coat is not great than 5/8" thick. The combined thickness of all plaster coats (regardless of numbers) shall be no more than 1-1/2" thick.

**AR106.13. Cement-Lime Plaster.**

**AR106.13.1. General.** Cement-lime plaster shall comply with Section 2508 of the 2006 IBC, except that the plaster may be applied in two (2) coats, provided that the combined thickness is at least 7/8" thick and each coat is no greater than 5/8" thick.

**AR 106.14 Portland Cement Plaster.**

**AR106.14.1 General.** Portland cement plaster shall comply with Section 2512 (2006 IBC) of this code, except that the amount of lime in all plaster coats shall be a minimum of one (1) part lime per six (6) parts cement so as to allow a minimum acceptable vapor permeability. The

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plaster may be applied in two (2) coats, provided that the combined thickness is at least 7/8" thick and each coat is not great than 5/8" thick. The combined thickness of all plaster coats (regardless of numbers) shall be no more than 1-1/2" thick.

**AR106.15 Alternative Plasters.** Plasters or variations of plasters, which do not fit in any other category described in this Section, may be allowed if such plasters are demonstrated to be appropriate for the particular application. Approval shall be made by the Building Official.

**AR106.16. Finishes Over Plaster.** Other finishes, as permitted elsewhere in this code, may be applied over the plaster, except as prohibited in Section AR106.17.

**AR106.17. Prohibited Plasters and Finishes.** Any plaster or finish with a cumulative perm rating of less than 5 perms is prohibited on straw bale walls or other bale elements, unless demonstrated to be necessary by the Arizona Registered design professional (Architect or Engineer).

**AR106.18. Separation of Wood and Plaster.** Where wood framing or wood sheathing occur in straw bale walls, such wood surfaces shall be separated from any plaster finish with No. 15 asphalt felt, Grade 'D' paper or other approved material per Section 1404.2 of this code, unless the wood is preservative-treated or naturally durable.

**Exception:** Clay plasters, see Section AR106.9.7

### **Section AR107 FIRE-RESISTANCE**

#### **AR107.1 Fire-Resistance Rating.**

**AR107.2. Rating with Plaster Finish.** Plastered straw bale walls have a one-hour fire resistance rating, provide the components of the wall fit with all of the following parameters:

**AR107.2.1** Bales may be laid flat or on-edge.

**AR107.2.2** The bale wall must have a minimum un-plastered thickness of fourteen (14") inches.

**AR107.2.3.** Bales may be installed in a running bond or stack bond, but vertical joints in a stack bond and continuous vertical gaps at any posts within both types of wall, must be fire-stopped with straw-clay

**AR107.2.4.** The wall must be finished on both sides and exposed ends with a plaster of any type allowed by this appendix. Clay plaster must be a minimum 1-1/2" thick and a minimum of two layers.

**AR107.2.5** The wall may be no closer than five (5') to a property line.

**AR107.2.6 Rating with other finishes.** Straw bale walls covered with finish materials other than or in addition to plaster, shall be deemed

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to have the equivalent fire resistive rating as wood-frame construction covered with the same finish materials.

**AR107.3 Permitted in Types of Construction.** Straw bale walls with a one-hour fire resistance rating per Section AR107.2 are permitted wherever combustible one-hour walls are allowed by Chapter 6 of the IBC. Such walls and unrated straw bale walls with any finish allowed by this code are permitted whenever combustible no-hour walls are allowed in Chapter 6 of the IBC.

**AR107.4 Openings in Rated Walls.** Openings and penetrations in any straw bale wall rated and required to be rated for a particular fire-resistance rating and for a particular applications, shall satisfy the same requirements for openings and penetrations in walls with the same fire-resistive rating and application as stated elsewhere in this code.

**AR107.5 Clearance to Fireplaces and Chimneys.** Straw bale surfaces adjacent to fireplaces or chimneys shall have a minimum of 2" clearance from the surfaces of the plaster coat and the chimney structure. The space between can be bridged by non-combustible materials, such as flashing and aluminum or other metal channel materials.

### **Section AR108 ELECTRICAL**

**AR108.1 Scope.** Wiring and other elements of the electrical system within or mounted to straw bale walls shall comply with all Sections of this code which govern electrical systems and with the 2011 National Electric Code.

**AR108.2 Wiring.** Type NM or UF cable may be used, or wiring may be in metallic or non-metallic conduit (which is the preferred method). Wiring which is unprotected by conduit shall be installed a minimum of two (2") inches from the face of the bale, except as necessary to enter or exit a junction box. The wiring shall be pushed into joints between bales or into the bale itself or the bales may be channeled to receive the wire.

**AR108.3 Wiring Attachment.** Where not held securely between bales or within a bale and not attached via staples to a wood member, wiring on straw bale walls shall be attached with minimum 17 gauge wire in a "U" configuration with a minimum eight (8") long legs.

**AR108.4 Attachment of Electrical Boxes.** Electrical boxes on bale walls shall be securely fastened to non-bale structural elements or to wooden stakes driven a minimum of twelve (12") into the bales or shall be secured by a combination of wire mesh and plaster, or by an acceptable equivalent method.

**AR108.5 Attachment of Service and Sub-panels.** Electrical service and sub-panels on bale walls shall be securely fastened to wood structural members, or to other wood members that have been adequately fastened to the straw bales. All proposed service panel and sub-panel support members shall be approved by the field inspector prior to attachment. The administrative authority, Arizona Public Service, retains the right

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to make any adjustments for support requirements and should be contacted prior to installation.

**Section AR109 WALL AND ROOF BEARING ASSEMBLY ANCHORAGE AND CONSTRUCTION**

**AR109.1 General.** The following is a recommended construction technique for straw bale construction. A designer or Arizona Registered design professional may submit other proposed methods as long as the general requirements of this Section and the International Building Codes are followed.

**AR109.2 Bale interconnection support.** Vertical reinforcing bars with a minimum diameter of ½" (#4 rebar), shall be embedded in the foundation at a minimum depth of six (6") inches and shall extend above the foundation a minimum of twelve (12") for the purpose of impaling the first course of bales. These vertical bars shall be located along the centerline of the bale wall, spaced not more than two (2) feet apart. A vertical bar shall also be located within one (1) foot of any opening (doors or window element) or corner, except at locations occupied by anchor bolts. These pins or bars will be wet set along with the anchor bolts.

**AR109.3 Intersecting walls.** Wall of other materials intersecting the straw bale walls shall be attached to the bale wall by means of one or more of the following methods or an acceptable equivalent.

(Adopted, Ord. No. 2009-06, 07/17/2009 (Amended Ord. No. 2011-12, (July 19, 2011)

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## CHAPTER 4-03

### INTERNATIONAL BUILDING CODE

#### Sections:

#### 4-03-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS

#### Section 4-03-001-0001 Amendments, Additions, and Deletions

The following provisions shall have the effect of either amending, adding to, or deleting from the International Building Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

**Amend IBC Section 105.1.1, Annual permit and Section 105.1.2** by replacing with the following:

**Section 105.1.1 Annual Facilities Permit Requirements - General.** The Annual Facility Permit is intended to simplify the permitting and inspection process for Qualified Facilities. The Annual Facility Permit simplified the process by allowing City inspectors to review plans without being processed through formal plan review. Instead, it allows the Qualified Agent and /or the Qualified Facility Maintenance Staff member, who are familiar with the construction history of the Qualified Facility, to review work without requiring a standard building permit. The process provides a limited exemption from the Building Code compliance. The Annual Facility Permit is issued to a business owner(s) for one building or a series of related buildings in a single complex owned by the same owner(s). The Annual Facility Permit fee shall be \$3,500 initially and \$2,000 for the Annual Facility Permit renewal fee. The business owner(s) covered under the Annual Facility Permit shall provide annual certification for the Qualified Agent and shall provide a detailed description of the anticipated work to be performed under the Annual Facility Permit.

**Add 105.1.1.1 Definitions:** For the purposes of this section, certain terms are defined as follows:

**INSPECTOR** is a person employed by the City of Flagstaff (either through contractual services or as a full time City employee) to perform field and/or plan review inspections of buildings and structures in order to enforce the City's Building Code requirements.

**PROJECT SCOPE LIMITATIONS** are restrictions on the size of a project for eligibility for the Qualified Facility building permit exemption under an Annual Facility Permit. The exemption eligibility is limited to projects not to exceed \$35,000 in construction costs or twenty-five percent (25%) of the existing square footage of the structures.

**QUALIFIED FACILITY MAINTENANCE STAFF MEMBER** is a person(s) either employed by or contracted with the Qualified Facility owner(s) and who

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is certified by the State of Arizona in the case of specialized inspections, such as (elevators, boiler, and fire sprinkler suppression systems) and/or is authorized by the Qualified Facility owner(s) to engage a Licensed contractor for the type of work being performed.

**QUALIFIED AGENT** is a person(s) authorized to represent the business Owner(s) of a Qualified Facility, registered and residing in the State of Arizona, and who shall be responsible to the business owner(s) for compliance with the substantive provisions of this code.

**QUALIFIED FACILITY** is an existing structure(s) owned by an individual(s), firm, corporation, or legal entity engaged in the business of manufacturing, processing, providing services or other commercial enterprise. The Qualified facility includes all existing Specialized Buildings and related building service equipment, all of which shall be an integral part of the business of manufacturing, processing, providing services, or other commercial enterprises of business owner(s). Subject to Project Scope Limitations, the Qualified facility under an Annual Facility Permit is generally exempt from the standard building permit requirements pertain to remodeling, repairs, alterations, improvements and conversions constructed completely within the original "footprint" of the existing structure(s). Any Qualified Facility which requires new additions, new detached facilities, or new facilities associated with all operations, shall require Development Review Board approval and shall meet all standard building permit requirements as set forth in Section 105.

**SPECIALIZED BUILDING** is an existing structure(s) that serves as an accessory building(s) as defined by Section 10-14-004-0001 of the City's Land Development Code, COF Ord.1690, and is used for the business of manufacturing, processing, provision of services, or other commercial enterprise of the Qualified Facility.

**Add 105.1.2.2. Permit Issuance.** Each applicant for an Annual Facilities Permit shall fill out an "Application for BUILDING/GRADING Permit" form. Each Qualified Facility shall require a separate application form. The information on the form shall include the following:

- A. The name, address, phone number, and business operation of the Qualified Facility owner(s). The name, address, and phone number of the Qualified Agent (if any) for the business and proof of current technical registration and licensing by the State of Arizona. If the Qualified Agent is not an employee of the Qualified Facility owner(s), the contract shall be for at least a one-year term.
- B. The name and phone number of the Qualified Facility Maintenance Staff Member for the Qualified Facility owner(s).
- C. A statement that the Qualified Agent may on behalf of the Qualified Facility owner(s), contract with third party on-site inspectors and/or superintendents for completing work under the Annual Facility Permit. In addition, a statement that the Qualified Facility owner(s) assumes all Responsibility for

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assuring that all work performed under the Annual Facility Permit meets the current Building Code standards.

- D. A site plan clearly indicating the existing location and total square footage of the entire Qualified Facility at the site intended to be covered under the Annual Facility Permit, including all Specialized Buildings and building service equipment.
- E. A statement describing the nature and extent of all work expected to be performed at the Qualified Facility under the Annual Facility Permit.

**Add 105.1.2.2.1** The Annual Facility Permit applicant may schedule inspections using the blanket permit issued after pre-paying an hourly fee (currently \$47/hour, Section 107 of the 1997 Uniform Administrative Code) and scheduling the inspection prior to any time limitations provided by the City of Flagstaff.

**Add 105.1.2.2.2** The appropriate routing action shall be taken by the City's Building Official for review of each Annual Facility Permit application. The applicant shall be notified upon approval or denial. If the application is disapproved, the applicant may appeal such decision to the Building and Fire Code Board of Appeals (Resolution 2001-42, 19 June 2001) no later than fourteen (14) calendar days after receipt of notice of disapproval. The fee for filing an appeal is \$250, which is non-refundable.

**Add 105.1.2.3 Permit Expiration.** The Annual Facility Permit(s) shall be valid for a period of one year from the date of issue. The Annual Facility Permit shall be renewed annually and timely payment of annual renewal fee shall be made prior to performing any further permitted work.

**Add 105.1.2.3.1** If the Qualified Agent's contract or employment at the Qualified Facility terminates prior to the expiration of the Annual Facility Permit, the Qualified Facility owner(s) shall notify the City's Building Official in writing within seven (7) calendar days. The Qualified Facility owner(s) shall engage a replacement Qualified Agent within fifteen (15) calendar days or the Annual Facility Permit shall automatically terminate. Application for a new Annual Facility Permit(s) shall be submitted with payment of new fees after fifteen (15) calendar days if no new Qualified Agent is contracted with or employed under the original Annual Facility Permit by that time. If the original Annual Facility Permit terminates and no new Annual Facility Permit is issued, then the Qualified Facility owner(s) shall complete any unfinished work with inspections provided by the City of Flagstaff at a regular hourly rate. No new projects may be started at the Qualified Facility under a terminated Annual Facility Permit.

**105.1.2.4 Scope of Work.** Project Scope Limitations shall be determined by project size (both dollar amount and physical area). Projects for remodeling, repairs, alterations, improvements, and conversions within the original "footprint" of the existing building(s) shall be limited



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to \$35,000 per project or no more than 25% of the original footprint area of the existing building(s) comprising the Qualified Facility.

**Add 105.1.2.4.1** Projects may not alter or modify egress or required fire sprinkler systems without specific review and approval by the City's Building Official. Fire sprinkler systems shall require a separate permit issued through the City of Flagstaff Fire Department. Plan review shall be reimbursed at the hourly rate currently in effect.

**Add 105.1.2.4.1** Projects may not be phased to circumvent the Project Scope Limitations. If the entire building is going to be renovated, or if there will be a significant change in occupancy, or if there will be a change in use, or if the portions of the building(s) will require demolition prior to renovation, then the Development Review Board and standard building permit process shall apply.

**Add 105.1.2.4.3** A list of all projects underway or completed under the Annual Facility Permit shall be maintained by the Qualified Agent and made available for review by the City of Flagstaff Building Official upon request.

**Add 105.1.2.4.4** All commercial demolition shall be subject to the rules established by Title 40, Code of Federal Regulations, Part 61, Subpart M, Asbestos NESHAP; Arizona Revised Statutes Title 49, § 49-421 et. seq. and § 49-471 et seq.; and Arizona Administrative Code, Title 18, Chapter 2, R18-2-1101. (See exemptions on page 3, Sec 61.145(a) Applicability).

### ~~CHAPTER 3 of IBC, USE AND OCCUPANCY CLASSIFICATIONS~~

~~Amend Section 308.2 to read:~~

~~308.2 Group I-1. To coincide with the State of Arizona Health Department, this occupancy shall include buildings, structures or parts thereof housing more than 10 persons on a 24 hour basis, who because of age, mental disability or other reasons, live in a residential environment that provides supervisory care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to the following:~~

~~Residential board and care facilities  
Assisted living centers  
Halfway houses  
Group homes  
Congregate care facilities  
Social rehabilitation facilities  
Alcohol and drug abuse centers  
Convalescent facilities~~

~~A facility such as the above with 10 or fewer persons shall be classified as a Group R-4 Condition 1 or shall comply with the International Residential Code in accordance with Section 101.2 where the building is in compliance with Section 419 of this code.~~

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~~Amend Section 308.3 to read:~~

~~308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing, custodial, personal, or directed care on a 24-hour basis of more than 5 persons who are not capable of self-preservation by responding to an emergency situation without physical assistance from staff. This group shall include but not be limited to the following:~~

~~Hospitals~~

~~Nursing homes (both intermediate care facilities and skilled nursing facilities)~~

~~Mental hospitals~~

~~Detoxification facilities~~

~~A facility such as the above with 5 or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2~~

~~This occupancy shall also include building and structures used for assisted living homes providing supervisor, personal, or directed care on a 24-hour basis of more than 10 persons who are not capable of self-preservation by responding to an emergency without physical assistance from staff. A facility such as the above with 10 or fewer persons shall be classified as an R-4 Condition 2.~~

~~Amend Section 310.1, R-4 to read:~~

~~Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living homes including not more than 10 occupants, excluding staff.~~

~~Amend Section 310.1 by adding:~~

~~310.1.1 Condition 1. This occupancy condition shall include facilities licensed to provide supervisory care services in which occupants are capable of self-preservation by responding to an emergency situation without physical assistance from staff. Condition 1 facilities housing more than 10 persons shall be classified as a Group I-1.~~

~~310.2 Condition 2. This occupancy condition shall include facilities licensed to provide personal or directed care services in which occupants are incapable of self-preservation by responding to an emergency without physical assistance from staff. Condition 2 facilities housing more than 10 persons shall be classified as Group I-2.~~

~~R-4 occupancies shall meet the requirements for construction as defined in Group R-3 except as otherwise provided for in this code and Section 419 or shall comply with the International Residential Code in accordance with Section 101.2 where the building is in compliance with Section 419 of this code.~~

~~Amend Section 310.2 by changing:~~

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~~**PERSONAL CARE SERVICE.** Assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments.~~

~~**RESIDENTIAL CARE/ASSISTED LIVING HOME.** A building or part thereof, housing a maximum of 10 persons, excluding staff, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides supervisory, personal, or directed services. This classification shall included, but not be limited to the following: residential board and care facilities, assisted living homes halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.~~

~~Amend Section 310.2 by adding:~~

~~**DIRECTED CARE SERVICE.** Care of residents, including personal care services, who are incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions.~~

~~**SUPERVISORY CARE SERVICE.** General supervision, including daily awareness of resident functioning and continuing needs.~~

~~Amend Section 419 in its entirety to read as follows:~~

### ~~Section 419 RESIDENTIAL CARE/ASSISTED LIVING HOMES~~

~~**419.1 Applicability.** The provisions of this section shall apply to a building or part thereof housing not more than 10 persons, excluding staff, on a 24-hour basis, who because of age. Mental disability or other reasons, live in a supervised residential environment which provides licensed care services. Except as specifically required by this division, R-4 occupancies shall meet all applicable provisions of Group R-3.~~

~~**419.2 General.** Buildings or portions of buildings classified as R-4 occupancies shall meet all the applicable provisions of Group R-3. and may be constructed of any materials allowed by this code. The building or buildings shall not exceed two stories in height nor be located above the second story in any building, and shall not exceed 2000 square feet above the first story except as provided in Section 506.~~

~~**419.3 Special Provisions.** R-4 occupancies having more than 2000 square feet of floor area above the first floor shall be of not less than one-hour fire-resistive construction throughout.~~

~~**419.3.1 Mixed Uses.** R-4 occupancies shall be separated from other uses as provides in Table 302.3.2.~~

# **2011~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

## **~~419.4 ACCESS AND MEANS OF EGRESS FACILITIES.~~**

**~~419.4.1 Accessibility.~~** ~~R-4 occupancies shall be provides with at least one accessible route per the Arizonans with Disabilities Act. Sleeping rooms and associated toilets shall be accessible.~~

~~**Exception:** Existing buildings shall comply with Section 3409. Bathing and toilet facilities need not be made accessible, but shall be provided with grab bars in accordance with ICC/ANSI A117.1.~~

## **~~419.4.2 EXITS~~**

**~~409.4.2.1 Number of Exits.~~** ~~Every story, basement, or portion thereof shall have not less than two exits.~~

~~**Exception:** Basements and stories above the first floor containing no sleeping rooms may have one means of egress as provided in Chapter 10.~~

**~~419.4.2.2 Distance to Exits.~~** ~~The maximum travel distance shall comply with Section 1004, except that the maximum travel distance from the center point of any sleeping room to an exit shall not exceed 75 feet.~~

**~~419.4.2.3 Emergency Exit Illumination.~~** ~~In the event of a power failure, exit illumination shall be automatically provided from an emergency system powered by storage batteries of an onsite generator set installed in accordance with the 2011 National Electrical Code.~~

**~~419.4.2.4 Emergency Escape and Rescue.~~** ~~R-4 occupancies shall comply with the requirements of Section 1025, except that Exception 1 to Section 1025.1 does not apply to R-4 occupancies.~~

**~~419.4.2.5 Delayed Egress Locks.~~** ~~In R-4 Condition 2 occupancies, delayed egress locks shall be permitted in accordance with Section 1008.1.3.4 and 1008.1.8.6 items 1,2,4,5 and 6.~~

## **~~419.5 SMOKE DETECTORS AND SPRINKLER SYSTEMS~~**

**~~419.5.1 Smoke Alarms.~~** ~~All habitable rooms and hallways in R-4 occupancies shall be provided with smoke alarms installed in accordance with Section 907.2.10.~~

**~~419.5.2 Sprinkler Systems.~~** ~~R-4 occupancies shall be provided with a sprinkler system installed in accordance with Section 903.2.9. Sprinkler systems installed under this Section shall be installed throughout, including attached garages, and in Condition 2 facilities, and shall include attics and concealed spaces of or containing combustible materials. Such systems may not contain unsupervised valves between the domestic water riser control valve and the sprinklers. In R-4 Condition 2 occupancies, such systems shall contain water-flow switches electrically supervised by an approved supervising station, and shall sound an audible signal at a constantly attended location.~~

# **201~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

## **CHAPTER 5 of IBC, GENERAL BUILDING HEIGHTS AND AREAS**

**Amend Section 509, "Tenant Space Separation"** by adding:

**Section 509.1** All tenant spaces within a single structure shall be separated by a wall constructed of wood or metal studs and covered with a minimum of ½" drywall material on each side from the finished floor to the underside of the roof deck or flooring above. Walls can be constructed of any material approved by the Building Code. Requirements for fire rated separations will be governed by the different types of occupancy and materials and protection requirements are covered in Chapter 7, 8 and 9 of this code.

## **CHAPTER 15 IBC, ROOF ASSEMBLIES AND ROOFTOP STRUCTURES**

Revise the amendment to Section 1506.3 with the following language:

All roofing materials used must be a class "A" or "B" material and rolled roofing is to be of a self-adhering polymer bitumen type material. (Amended, Ord. 2009-06, 07/18/2009)

Amend Sections 1507.8 and 1507.9 by deleting each section in their entirety.

## **CHAPTER 18 of IBC, SOILS AND FOUNDATIONS**

**Amend Sections 1805.2 and 1805.4** by adding:

1805.2.4 and 1805.4.6 Footing Reinforcement. A minimum of 2-#4 steel reinforcement spaced per ACI 318, Section 7.5 shall be required in all footings.

**Amend 1805.4.1** by changing the last line of the first paragraph to:

The minimum width of footings shall be 16 inches.

**Amend Table 1805.4.2** by changing:

12 and 15 inch width of footing to 16 inches minimum.

6 inch thickness of footing to 8 inches minimum.

**Amend Section 1805.5.2.2** by adding paragraph number 8:

8. Masonry foundation walls shall be solid grouted up to floor slab.

## **CHAPTER 31, IBC, SPECIAL CONSTRUCTION**

Revise the amendment to Section 3109, Swimming Pool Enclosures and Safety Devices, as follows:

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Refer to the Arizona Revised States (ARS) governing pool enclosure requirements. (Amended Ord. No. 2011-12, (July 19, 2011))

### INTERNATIONAL BUILDING CODES (IBC), 200~~6~~12 EDITION - APPENDICES

Adopt as the following appendices with the exceptions and/or amended language as follows:

**Appendix B** - Board of Appeals

**Appendix C** - Group U - Agricultural Buildings

APPENDIX I - Patio Covers

APPENDIX J - Grading

Amend Appendix J, by adding Section J104.5 Storm Water requirements:

1. Contractor shall submit to the Arizona Department of Environmental Quality a Notice of Intent (NOI) and a Notice of Termination (NOT) pursuant to the requirements of ARS Title 49, Chapter 2, Article 3.1. A copy of the submitted NOI and the NOT shall be provided to the City of Flagstaff Stormwater Section. The NOI shall be submitted prior to issuance of any City of Flagstaff grading or offsite permits. The NOT shall be submitted prior to final acceptance of off-site improvements and the certificate of occupancy.
2. An Arizona certified or Registered Civil Engineer shall prepare and submit for review and approval a Storm water Pollution Prevention Plan (SWPPP) in accordance with the Arizona Department of Transportation (ADOT) Best Management Practices (BMP) Manual (or other BMP's as may be approved by the Storm water Manager). Submittal shall be made concurrent with the Civil Plan submittal and attached to the Civil Plan set. Review timeframes shall be the same as other civil reviews.
3. Prior to commencement of Grading Activities, the SWPPP shall be in place and the City of Flagstaff contacted for inspection. The grading permit shall be issued upon City of Flagstaff approval of the implementation of the approved SWPPP.
4. During construction, the SWPPP shall remain in place, and shall be maintained until project completion as witnessed by a Final Grading Certification and the filing of a NOT. Failure to maintain structural controls may result in a Stop Work Order.
5. In accordance with the provisions of this section, the City of Flagstaff may withhold permits, occupancy or enforce by other remedy in order to ensure compliance.

(Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended, Ord. 2009-06, 07/18/2009; Amended Ord. 2011-12, July 19, 2011)

# 201~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE

## CHAPTER 4-04 INTERNATIONAL PLUMBING CODE

### Sections:

#### 4-04-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS

#### 4-04-001-001 Amendments, Additions, and Deletions

The following provisions shall have the effect of either amending, adding to, or deleting from the International Plumbing Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

### CHAPTER 3, GENERAL REGULATIONS

Amend Section 301.3 by adding to the end of the paragraph:

This section shall not be construed to prevent indirect waste systems required by Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an approved gray water system for flushing of water closets and urinals or for subsurface landscape irrigation.

(Amended Ord. No. 2011-12, (July 19, 2011))

**Amend Section 301.7** to read:

Where conflicts between this Code and the conditions of the listing or the manufacturer's installation instructions occur, the listing or manufacturer's installation requirements shall apply.

**Amend last sentence of Section 305.6** to read:

Exterior Water supply piping shall be installed not less than thirty (30) inches (765 mm) below grade.

Change the amendment to Section 305.6.1 by adding the following language:

Building sewers that connect to private sewage disposal systems shall be regulated by the Coconino County Health Department. Building sewers for single family detached buildings on City provided sewer shall be a minimum of twelve (12) inches (306 mm) below grade.

(Amended Ord. No. 2011-12, (July 19, 2011))

**Amend Section 312.1**, changing the ~~ninth~~ tenth sentence to read:

All plumbing system piping shall be tested with either water or air.

# **2014~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

Amend Section 312.3 by deleting the first sentence.

**Amend Section 312.4** to DELETE in its entirety.

**Amend Section 312.6** to DELETE in its entirety.

**Amend Section 312.7** to DELETE in its entirety.

## **CHAPTER 4, FIXTURES, FAUCETS AND FIXTURE FITTINGS**

**Amend Section 419, Urinals by adding a new sub-section:**

419.4 Urinals. All new commercial, institutional, and public facility construction or additions and alterations to restrooms in commercial, institutional, and public facilities shall install waterless urinals with a minimum 1 pint flush.

Amended Ord. 2007-48, 01/15/2008; Amended, Ord. 2009-06, 07/18/2009;  
Amended Ord. No. 2011-12, July 19, 2011

## ~~Chapter 5, WATER HEATERS~~

~~Amend Section 501 by adding:~~

~~**501.9 Energy Efficiency.** Water heaters must be insulated using exterior "jackets" or, "Energy Star" or energy conservation rated appliances that have pre-installed insulation, the insulation information must be available on the appliance at the time of final inspection. A minimum total insulation value of R-16 must be achieved. (This applies to new installation or replacements.)~~

## **CHAPTER 6, WATER SUPPLY AND DISTRIBUTION**

**Amend Table 604.4 by changing the following values:**

Maximum Flow Rate or Quantity for a Water Closet to Max. 1.3 gal.(HET)

**Amend Section 607.2 by deleting the section in its entirety.**

**Amend Section 610** to DELETE in its entirety.

## **CHAPTER 7 SANITARY DRAINAGE**

**Amend Section 703** by adding a new section:

**703.6 Building Sewer Locating Means.** All non-metallic building sewer piping shall be installed with a plastic covered No. 12 AWG Type UF 600V tracer wire taped to the top of the piping with a minimum 10 mil tape. The building sewer tracer wire shall be green in color.



**201~~4~~<sup>3</sup> AMENDMENTS TO FLAGSTAFF CITY CODE,  
TITLE 4, BUILDING CODE**

CHAPTER 9, VENTS

**Revise the amendment to Section 904.1 to read:**

"...terminated at least 12 inches (306 mm) above the roof."

(Amended Ord. No. 2011-12, (July 19, 2011))

Adopt the Appendix C, Gray Water Recycling Systems, as written.

Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008

# 201~~4~~3 AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE

## CHAPTER 4-05

### NATIONAL ELECTRICAL CODE

Sections:

[4-05-001-0001](#) AMENDMENTS, ADDITIONS, AND DELETIONS

#### **4-05-001-0001        Amendments, Additions, and Deletions**

The following provisions shall have the effect of either amending, adding to, or deleting from the National Electrical Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

#### **ARTICLE 110, REQUIREMENTS FOR ELECTRICAL INSTALLATIONS**

**Amend Article 110.2** by adding:

All electrical conductors, components, material and equipment shall be listed and labeled.

**Amend Article 110.5** to read:

Conductors used to carry current shall be of copper only. Where the conductor material is not specified, the material and the sizes given in this Code shall apply to copper conductors. The use of aluminum wire shall be approved for feeders and service entrance conductors only and shall not be used for branch circuit wiring.

**Amend Article 110.7** by adding:

All equipment rated at 1000 amperes or more shall be tested for insulation breakdown, mechanical integrity, and workmanship prior to the equipment being energized. A certified Hi-pot test shall be performed and a certificate issued to the City of Flagstaff Project Inspection Program, Development Services Section. This test shall be performed in the presence of a City of Flagstaff Building Inspector and conducted by a testing firm approved by the Building Official.

Said test shall be performed for a period of one (1) minute, the application of a 60 hertz alternating potential of 1000 volts plus twice the rated phase to phase voltage of the equipment.

This test shall be performed between all phases to ground, phase to phase, and neutral if isolated.

#### **ARTICLE 210, CIRCUITS**

**Amend Article 210.5** by adding:

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TITLE 4, BUILDING CODE**

- (D) **Color Code.** Where 15, 20, or 30 amp branch circuits requiring a neutral are installed in race ways or cable assemblies, the conductor of branch circuits connected to the same system shall conform to the following color code:

<u>Volts</u>	<u>Phase</u>	<u>System</u>	<u>Phase A</u>	<u>Phase B</u>	<u>Phase C</u>	<u>Neutral</u>
120/208	3	Wye	Black	Red	Blue	White
120/240	3	Delta	Black	Orange	Blue	White
277/480	3	Wye	Brown	Orange	Yellow	Gray

**ARTICLE 250, GROUNDING**

**Amend Article 250.30 (A) (2)** by adding:

- (a) All new building construction shall have a one piece concrete-encased electrode and electrode conductor (Ufer), a minimum twenty (20) feet in the footing, sized from the following table:

0-200 Amp Service	1 piece #4 copper (electrode and electrode conductor)
400 Amp Service	1 piece 1/0 copper (electrode and electrode conductor)
600 Amp Service	1 piece 2/0 copper (electrode and electrode conductor)
Larger than 800 Amp Service	1 piece 3/0 copper ( electrode and electrode conductor)

Where the Ufer has been lost, damaged, or un-located, a ground ring or modification of the same consisting of thirty (30) feet of #2 bare copper wire, buried a minimum of thirty (30) inches deep in a trench, or a Plate electrode per 250.53 (H) and per 250.56 shall be required in lieu of a concrete-encased electrode. Services larger then 200A shall be sized from the table above.

(Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended Ord. No. 2009-06, 07/18/2009; Amended Ord. 2011-12, July 19, 2011)

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TITLE 4, BUILDING CODE**

**CHAPTER 4-06**

**INTERNATIONAL MECHANICAL CODE**

**Sections:**

**4-06-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS**

**Section 4-06-001-0001 Amendments, Additions, and Deletions**

The following provisions shall have the effect of either amending, adding to, or deleting from the International Mechanical Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

**CHAPTER 3, General Regulations**

Revise the amendment to Section 303.4 as follows:

Refer to amendments to the IFGC Section 305.5 for requirements.

(Amended Ord. No. 2011-12, (July 19, 2011))

**Amend Section 304.2** to read:

Where conflicts between this Code and the conditions of the listing or the manufacturer's installation instructions occur, the listing and manufacturer's installation requirements shall apply.

**Amend Section 304.6** to read:

Appliances located in private garages and carports shall be installed per Section 303.3 and/or 304.4.

**Amend Section 306.1** by adding to the last sentence "or the removal of any other appliances."

**CHAPTER 9, IMC, SPECIFIC APPLIANCES, FIREPLACES, AND SOLID FUEL-BURNING EQUIPMENT**

**Amend Section 903.3** to read:

An unvented gas log heaters shall not be installed at any time unless first approved by the local gas utility company. A signed and dated letter of such approval shall be submitted to the Building Official before a permit can be issued.

|

## **201~~4~~<sup>3</sup> AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

Amend Section 928, Unvented Room Heaters, by adding:

928.1 Installation. Vent free appliances shall not be installed unless first approved by the local gas utility company. A signed and dated letter of such approval shall be submitted to the Building Official before a permit can be issued.

### **CHAPTER 10, BOILERS, WATER HEATERS and PRESSURE VESSELS**

**Amend Section 1002.1** by changing the second sentence to read:

All water heaters shall be capable of being removed without first removing a permanent portion of the building structure or removing another appliance.

(Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008 Amended Ord. No. 2009-06, 07/18/2009; Amended Ord. No. 2011-12, July 19, 2011)

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## **CHAPTER 4-07**

### **INTERNATIONAL FUEL GAS CODE**

#### **Sections:**

#### **4-07-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS**

#### **Section 4-07-001-0001 Amendments, Additions, and Deletions**

The following provisions shall have the effect of either amending, adding to, or deleting from the International Fuel Gas Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

(Amended Ord. 2011-12, July 19, 2011)

#### **CHAPTER 3, GENERAL REGULATIONS**

Amend Section 303.3 by deleting numbers 3 and 4.

Delete the following amendments to Chapter 3:

**Amend Section 305.5. Private Garages** by deleting in its entirety and replacing with:

Appliances shall not be installed in a location where subject to mechanical damage unless protected by approved barriers such as steel bollards filled with concrete, poured in place concrete curb, or installed a minimum 24 inches above the floor. Appliances not subject to mechanical damage shall be installed per Section 305.3

Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008;  
Amended Ord. No. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, July 19, 2011)

#### **CHAPTER 4, GAS PIPING IMSTALLATIONS**

**Amend Section 403.4.3. Copper and Brass**, delete and replace with:

Copper and brass pipe, threaded copper, brass and aluminum piping shall not be used for gas piping installations within the City of Flagstaff.

**Amend Section 406.4.1. Test Pressure**, to read:

The test pressure to be used shall be no less than ten (10) pounds per square inch gauge pressure or six (6) inches of mercury measured with a manometer or slope gauge for single family dwellings or for systems with less than fifteen (15) pounds per square inch or fourteen (14) inches of water column. Welded piping and piping that carries gas at pressure in excess of fourteen (14) inches of water column or fifteen

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(15) pounds per square inch shall be tested with no less than sixty (60) pounds per square inch. The test gauge shall not be more than twice the test pressure and in 1/10 pound increments or less.

Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended Ord. No. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, July 19, 2011)

**Amend Section 406.4.2. Test Duration,** to read:

Test duration shall be no less than fifteen (15) minutes for single family dwellings or systems with less than fifteen (15) pounds per square inch, fourteen (14) inches of water column. Welded piping, and systems with fifteen (15) pounds per square inch (14 inches of water column) or more shall be tested for no less than thirty (30) minutes.

**CHAPTER 6, SPECIFIC APPLIANCES**

**Amend Section 614.5. Makeup air,** by deleting the first sentence:

Installations exhausting more than 200 cfm (0.09 m<sup>3</sup>/s) shall be provided with makeup air.

**Amend Section 621. Unvented Room Heaters,** to be deleted in its entirety.

Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended Ord. No. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, July 19, 2011)

# **201~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

## **CHAPTER 4-08**

### **INTERNATIONAL EXISTING BUILDING CODE**

#### **Sections:**

#### **4-08-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS**

#### **4-08-001-0001 Amendments, Additions, and Deletions**

The following provisions shall have the effect of either amending, adding to, or deleting from the International Existing Building Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

#### **CHAPTER 1, ADMINISTRATION**

**Amend Section 105.1.1. Annual Permit,** by referencing City of Flagstaff 2011 Code Amendments to the International Building Code (IBC), 2006 Edition for requirements and compliance issues.

**Amend Section 105.5. Expiration,** by referencing City of Flagstaff 20011 Code Amendments to the International Residential Code (IRC), 2006 Edition and International Building Code (IBC), 2006 Edition for requirements and compliance issues on the duration of building permits.

#### **CHAPTER 11, HISTORIC BUILDINGS**

Revise the amendment to Section 101.2 as follows:

Amend Section 1101.2 Report by adding Section 1001.2.1 as follows:

Section 1101.2.1, Any changes to a structure in a historic district or to buildings listed on the City of Flagstaff Historic Registry shall be reviewed by the Community Investment Division, Historic Preservation representative, and Project Management Section, Development Services Division prior to issuing a building permit. The project may be referred to the Development Review Board and/or the Historic Preservation Commission for complete staff review by the board members.

(Amended Ord. No. 2011-12, July 19, 2011 )

Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended Ord. No. 2009-06, 07/18/2009) (Amended Ord. No. 2011-12, July 19, 2011)



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## CHAPTER 4-09

### INTERNATIONAL ENERGY CONSERVATION CODE

Sections:

4-09-001-0001 AMENDMENTS, ADDITIONS, AND DELETIONS

#### Section 4-09-001-0001 Amendments, Additions, and Deletions

The following provisions shall have the effect of either amending, adding to, or deleting from the International Energy Conservation Code adopted in Flagstaff City Code, Title 4, Building Regulations, Chapter 4-01, Administrative Enactments, Section 4-01-001-0002, Adoption.

#### CHAPTER 4, RESIDENTIAL ENERGY EFFICIENCY

Add the following amendments to Chapter 4:

Amend Section 402.1.1 by adding:

Insulation values in 2x6 wall construction will remain the same at R-19.

Exception: Insulation values in existing 2x4 wall construction will remain at R-15 (high density).

(Amended Ord. No. 2011-12, July 19, 2011)

Amend Section 402.1.3.1 Window Fenestration

All new construction and replacement windows to have National Fenestration Rating Council (NFRC) total unit U-factor of 0.45 or less. Windows shall also be low-E where practical (not recommended for southern exposures) or not being used for solar heat gain to fuel a solar massing device. (Amended Ord. No. 2011-12, July 19, 2011)

~~Amend Section 403 by adding:~~

~~Section 403.1.2 All new construction and replacement heating units (optional for hydronic in floor heating systems) will have Programmable thermostats.~~

(Amended Ord. No. 2011-12, July 19, 2011 )

Amend Section R402.4.1.2 Testing in its entirety.

Section 403.7 Furnaces: All furnaces installed in new construction shall be 90% condensing type furnaces.

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Exception: Replacement furnaces are to be voluntarily 90% condensing type furnaces.

(Amended Ord. No. 2011-12, July 19, 2011)

~~Section 403.8 Water heaters shall either be insulated using exterior "jackets" or for "Energy Star" or energy conservation rated appliance that have pre-installed insulation. The insulation information must be available on the appliance installed at the time of final inspection. A minimum total insulation value of R-16 must be achieved. (This applies to new installation or replacements.)~~

~~Exception: The R-16 is not required when the existing room size prohibits the larger sized water heater and the Manufacturer's listing prohibits the use of insulation jackets.~~

~~(Amended Ord. No. 2011-12, July 19, 2011)~~

~~Section 403.9 A carbon monoxide (CO) detector shall be installed at the house/garage entry door and within each utility room where combustion appliances are used (sealed combustion appliances are exempt). A laundry room which uses gas appliances would require a detector.~~

~~Section 403.10 All hot water supply lines (both ½" and ¾") will be insulated with a minimum of R3.6 wrap insulation; or ½" foam covers. All joints between sections of insulation will be snugly butted together and wrapped with duct tape.~~

Section 403.11 All newly installed toilets must be "high efficiency toilets" (HET) units which have a maximum of 1.3 gallons for solids. (Special attention to this change needs to be addressed by suppliers and home improvement centers which stock the older style units).

~~Section 403.13 A construction waste reduction/reuse plan will be written and provided at the time of building permit submittal for new construction of all new commercial projects (apartments and condominiums), townhouse subdivisions and or single family detached builders who submit for more than 15 permits within a subdivision during any one calendar year. The plan must address construction waste to include cardboard, drywall, foam, metal, concrete, masonry and asphalt.~~

~~Section 403.14 All appliances, refrigerators, freezers, washers, dryers, cook stoves, that are supplied by the contractor shall be Energy Star.~~

(Amended Ord. No. 2011-12, July 19, 2011)

~~Amend Chapter 4 by adding Section 405.~~

~~Section 405 Best Practices: The following items are recommended but not required in all new residential construction.~~

~~Section 405.1: Future Solar Water Heater. All new residential construction shall be built so as to accommodate a future installation of a~~

## **2014~~13~~ AMENDMENTS TO FLAGSTAFF CITY CODE, TITLE 4, BUILDING CODE**

~~solar water tank. Ceilings within the water heater compartment shall be a minimum 8 foot in height. Either insulated plumbing for standard inter-connect to a roof mounted system will be pre-plumbed or adequately sized chase/access panel provided between the water heater compartment and the attic space will be installed.~~

~~Exception: Single story single family dwellings.~~

~~Section 405.2: Future Solar Photovoltaic. All new residential construction shall be supplied with a minimum ¾ inch electrical conduit, with a pull wire, for the future installation of a solar photovoltaic system. The conduit shall be run from the inside of an accessible attic crawl space to the electrical service entrance section.~~

~~Section 405.3: Future Alternative Energy Systems. (Wind Turbines or geo-thermal): Working drawings prepared by the owner builder, contractor, draftsman or design professional should indicate possible location of expansion to accept alternative energy systems. This can be demonstration by indicating location of future accessory service panels for electrical systems or expansion capability of mechanical rooms for boilers and control systems.~~

~~Section 405.4: Voluntary Sustainability Programs. This allows the voluntary use of LEED, Coconino county sustainable checklist, National Green Building Standard, NAHB 2008, ICC 700-2008. This allows the builder or property owner to participate in sustainable programs that are not listed in the International Energy Conservation Code, 2006 edition.~~

~~Section 405.5: Jump Ducts. Provide an air balancing device between adjoining rooms to allow equalization of air pressure and temperatures between rooms.~~

~~Section 405.6: Exterior Wall Insulation. Contractor to increase R-19 to R-24 insulation using high density or spray applied foam insulation in exterior framed walls.~~

~~Section 405.7: Protection of Cold Water Supply Lines. Add R-19 insulation to water supply lines that are exposed in crawl spaces.~~

~~Section 405.6: Lighting. At the time of final inspection, the builder, contractor, or owner may install compact fluorescent lights (CFLs), other fluorescent, LEDs or other energy efficient lighting equivalent to or better than fluorescents in the high use areas for new construction. High use areas are typically defined as kitchens, living room, family room, and dining area. Specialty type lighting fixtures shall be of a low wattage or low voltage type.~~

~~Exception: Specialty lighting (chandeliers and under counter halogen lights) may be used in living rooms, dining rooms and kitchens. Recessed spot lights will use CFL's or LED's and reostats must be rated for their use.~~

~~Section 405.7: Wood floors in new construction may have an insulation value of R-30.~~

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~~Section 405.8: Insulation in contact with the ground may be extruded polystyrene or other foam products other than expanded polystyrene.~~

~~Section 405.9: Hot water re-circulating pumps are to have a programmable timer, an on/off switch, and ¾ inch foam pipe insulation.~~

Section N1105.10 Dual Plumbing. All new residential single family detached units are "voluntarily" requested to install the piping only for dual plumbed for "gray water" disposal and conservation efforts. Access for future valving must be provided and the initial installation will be connected to sanitary sewer. The piping shall be installed in accordance Appendix C, Gray Water Recycling Systems, of the International Plumbing Code, 2009 Edition, and the regulations established by ADEQ. Reference Type 1 General Permit Best Management Practices for the 13 points of using gray water, at [www.adeq.state.az.us](http://www.adeq.state.az.us) or call at 1-800-234-5677.)

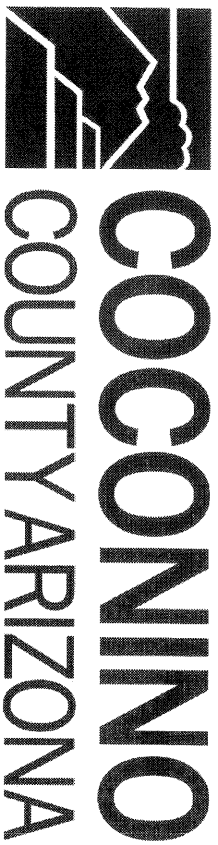
(Amended Ord. No. 2011-12, July 19, 2011)

### CHAPTER 5 COMMERCIAL ENERGY EFFICIENCY

**Amend Chapter 5** by deleting Sections 505.6.1 through 505.6.2 and replace with:

City of Flagstaff has an exterior lighting permit requirement, enforces a "Dark Sky Ordinance" and requires review by zoning enforcement and the Project Management Section prior to installation. Lumen calculations are required and amounts are limited by property size and use.

(Amended Ord. No. 2007-47, 12/18/2007; Amended Ord. 2007-48, 01/15/2008; Amended Ord. No. 2009-06, 07/18/2009; Amended Ord. No. 2011-12, July 19, 2011)



# 2012 IECC

## **A discussion on the proposed adoption and implementation Of the 2012 Energy Code**

For standard residential construction

# **Overview of the prescriptive changes for residential construction from the currently adopted 2006 IECC and ordinances to the proposed adoption of the 2012 IECC**

## **2006 IECC and Ordinance**

- R-30 Floor insulation
- R-19 2x6 wall insulation
- R-15 2x4 wall insulation
- R-38 Ceiling/roof insulation
- Mass wall R-value 13
- Basement wall R- value 10/13
- Crawl space wall r-value 10/13
- Slab R-value and depth 10,4'
- Window fenestration U.45
- Skylight fenestration U.60
- No hot water pipe insulation required

## **2012 IECC**

- No change
- R-20 2x6 wall insulation
- R-13+5 2x4 wall insulation
- R-49 Ceiling/roof insulation
- Mass wall R-value 13/17
- Basement wall R- value 15/19
- Crawl space wall r-value 15/19
- No change
- Window fenestration U.32
- Skylight fenestration U.55
- Hot water pipe insulation required R-3

# **New prescriptive requirements for the 2012 IECC**

- Eave baffles are required for air permeable insulation in vented attics. R402.2.3
- Access hatches and doors shall be weather-stripped and insulated to a level of the surrounding area. R-402.2.4
- All sunrooms with thermal isolation and enclosing conditioned shall have R-24 in ceiling and R-13 in the walls except the wall connecting to conditioned space. All other applications shall meet the insulation requirements of this code. R402.2.12
- Glazed fenestration exemption for 15sf shall not apply if U-factor alternative methods used. R402.3.3
- New Table R402.4.1.1 addresses specific areas where air barriers shall be installed.

# **New mandatory requirements for the 2012 IECC**

- Dwelling units shall be tested and verified as having an air leakage rate not to exceed 3 air changes per hour. Tests are required by A third party testing agency. R402.4.1.2
- The Building thermal envelope and all components shall be inspected and approved by a third party agency or jurisdiction R402.4.1.1
- New wood burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. R402.4.2
- Forced air furnaces as a primary heat source are required to have programmable thermostats. R403.1.1
- Post construction or rough trades duct tightness tests are required by a third party testing agency. R403.2.2



# **New mandatory requirements for the 2012 IECC**

- Circulating hot water systems require an automatic or readily accessible disconnect switch.R403.4.1
- Hot water piping shall be insulated to a minimum of R-3 based on maximum run length and applied to specific areas.
- Residences shall be provided with whole house mechanical ventilation systems Or with other approved means of ventilation.R-403.5
- 75% of lamps in permanently installed fixtures shall be hi-efficacy.

# **IMPACTS: Design and Costs VS. Savings**

- 2012 IECC requirements “should” provide 30% better efficiency than the 2006 IECC.
- Prescriptive insulation and fenestration requirements- studies show a return on investment in 3-6 years (depending on project).
- Cost of required blower door and duct blaster testing (performance testing).
- Design and calculations required on mechanical systems.
- To meet the prescriptive attic insulation requirements, raised heel trusses will be required at an increased cost of a minimum of 5%.

# **Coconino County Process for 2012 Code Adoption**

- Currently reviewing the I-Codes internally and are developing code change documents for each of the code books. The documents will show the differences between currently adopted codes/ordinance and the 2012 codes.
- Provide community and in-house education on 2012 Codes.
- Building Official will develop ordinance with code changes to present to the Building Safety Advisory Board (BSAB). BSAB will review ordinance and provide recommendations.
- Building Official will present ordinance with BSAB recommendations to Planning and Zoning Commission (P&ZC). The P&ZC will review documents and make their recommendations.
- Next, the Building Official will present ordinance with everyone's recommendations to the Board of Supervisors (BOS). The BOS will either approve the ordinance with recommended changes or they will ask for additional changes and will review it after changes are made and then either adopt or not.

## 2012 Code Amendments

### What the Code says:

IPC Table 604.4: "Urinal Maximum Flow Rate is 1.0 Gal./flush." Current amendment (Section 419.4 pg. 44) requires Waterless urinal.

IRC Section R 303.4, M1507.3, R403.5  
Whole-House Ventilation system: "Where the air Infiltration rate of a dwelling unit is less than 5 air changes per hour when tested with a blower door at a pressure of .2 inch w.c. in accordance with Section N1102.4.1.2, the dwelling unit shall be Provided with a whole-house mechanical Ventilation system in accordance with Section M1507.3.

IECC Section R402.4.1.2 Testing: "The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8."

IRC Section P2503.5.1, IPC Section 312.3:  
"DWV systems shall be tested on completion of the rough piping installation by water or of piping other than plastic, by air with no evidence of leakage".

### Amendment:

Urinal Maximum Flow Rate to have a max. 1 pint /flush.

Delete in its entirety.

Delete in its entirety.

Delete "for piping systems other than plastic",

IECC Table R402.1.1, Ceiling R-value, 49.  
Section R402.2.1 Ceilings with attic spaces.  
When Section R402.2.1 would require R-38 in the ceiling, R-30 shall be deemed to satisfy the requirement for R-38 wherever the full height of uncompressed R-30 insulation extends over the wall top plate at the eaves. Similarly, R-38 shall be deemed to satisfy the requirement for R-49 wherever the full height of uncompressed R-30 insulation extends over the wall top plate at the eaves.

Add Exception: Where R-49 is required in the ceiling, high-density R-30 shall be deemed to satisfy the requirements for R-49 whenever the insulation extends over the wall top plate at the eaves.